

## **EXHIBIT 82**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
	§	

**DECLARATION OF KENNETH H. BROWN  
IN SUPPORT OF SUPPLEMENTAL MOTION TO  
DISQUALIFY WICK PHILLIPS GOULD & MARTIN, LLP AS  
COUNSEL TO HCRE PARTNERS, LLC AND FOR RELATED RELIEF**

I, Kenneth H. Brown, pursuant to 28 U.S.C. § 1746(a) and under penalty of perjury, declare  
as follows:

1. I am an attorney in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel  
to the above-referenced Debtor, and I submit this Declaration in support of the *Supplemental*



*Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* (the “Supplemental Motion”) being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit A** is a true and correct copy of the August 11, 2021 Deposition Transcript of Rob Wills.

3. Attached as **Exhibit B** is a true and correct copy of the *Debtor’s Amended Notice of Rule 30(b))6 Deposition to Wick Phillips Gould & Martin, LLP* [Docket No. 2608], dated July 26, 2021.

4. Attached as **Exhibit C** is a true and correct copy of the September 16, 2021 Deposition Transcript of Robert Kehr.

Dated: October 1, 2021.

/s/ Kenneth H. Brown  
Kenneth H. Brown

## EXHIBIT A



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

CHAPTER 11

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,  
Debtor.

CASE NO. 19-34054-SGI11

-----X

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,  
Plaintiff,

ADVERSARY PROCEEDING

vs.

NO: 21-03000-SGI

HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS,  
L.P.; NEXPOINT ADVISORS,  
L.P.; HIGHLAND INCOME  
FUND; NEXPOINT STRATEGIC  
OPPORTUNITIES FUND;  
NEXPOINT CAPITAL, INC.;  
AND CLO HOLDCO, LTD.,  
Defendants.

-----/

DEPOSITION OF ROB WILLS, ESQ.

VIA REMOTE VIDEOCONFERENCE

August 11, 2021

9:30 a.m., Central

Reported by:

Anne E. Vosburgh, CSR-6804, RPR, CRR

Job No. 197673

<p>Page 2</p> <p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3</p> <p>4 On behalf of the Debtor:</p> <p>5 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>6 150 California Street</p> <p>7 San Francisco, California 94111</p> <p>8 BY: KENNETH BROWN, ESQ.</p> <p>9 - and -</p> <p>10 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>11 780 Third Avenue</p> <p>12 New York, New York 10017</p> <p>13 BY: HAYLEY WINOGRAD, ESQ.</p> <p>14</p> <p>15</p> <p>16 On behalf of Unsecured Creditors Committee:</p> <p>17 SIDLEY AUSTIN</p> <p>18 2021 McKinney Avenue</p> <p>19 Dallas, Texas 75201</p> <p>20 BY: CHANDLER ROGNES, ESQ.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1</p> <p>2 REMOTE APPEARANCES (Continued):</p> <p>3</p> <p>4 On behalf of HCRE Partners, LLC (n/k/a NexPoint Real</p> <p>5 Estate Partners, LLC):</p> <p>6 WICK PHILLIPS</p> <p>7 100 Throckmorton Street</p> <p>8 Fort Worth, Texas 76102</p> <p>9 BY: BRANT MARTIN, ESQ.</p> <p>10 LAUREN DRAWHORN, ESQ.</p> <p>11</p> <p>12 On behalf of the Senior Employees and CPCM, LLC:</p> <p>13 BAKER MCKENZIE</p> <p>14 1900 North Pearl Street</p> <p>15 Dallas, Texas 75201</p> <p>16 BY: DEBRA DANDENEAU, ESQ.</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 LA ASIA CANTY, Paralegal from Pachulski Stang</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 4</p> <p>1</p> <p>2 I N D E X</p> <p>3</p> <p>4 ----- EXAMINATIONS -----</p> <p>5 WITNESS: ROB WILLS, ESQ.</p> <p>6 Examination by Mr. Brown 6</p> <p>7 Examination by Mr. Martin 113</p> <p>8 Re-Examination by Mr. Brown 124</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 ----- MARKED EXHIBITS -----</p> <p>14 NUMBER DESCRIPTION PAGE</p> <p>15 Exhibit A Amended Notice of 30(b)(6) 11</p> <p>16 Deposition</p> <p>17 Exhibit B SE Multifamily Holdings LLC, 14</p> <p>18 Limited Liability Company</p> <p>19 Agreement, August 23, 2018</p> <p>20 Exhibit C Bridge Loan Agreement, 20</p> <p>21 September 26, 2018</p> <p>22 Exhibit D Email chain, "RE: Project 72</p> <p>23 Unicorn - Final Org Charts,"</p> <p>24 with attachments</p> <p>25</p>	<p>Page 5</p> <p>1</p> <p>2 EXHIBITS (Continued):</p> <p>3 Exhibit E Email chain, "RE: Unicorn - 90</p> <p>4 DSTs"</p> <p>5 Exhibit F SE Multifamily Holdings LLC 98</p> <p>6 First Amended and Restated</p> <p>7 Limited Liability Company</p> <p>8 Agreement</p> <p>9 Exhibit H Email chain, "FW: Draft LLC 101</p> <p>10 Agreement"</p> <p>11 Exhibit I Email chain "RE: SE 122</p> <p>12 Multi-Family Holdings LLC:</p> <p>13 Amended and Restated,"</p> <p>14 beginning Bates</p> <p>15 Highland136853</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Remote Videoconference Deposition 3 August 11, 2021, 9:30 a.m., Central 4 _____ 5 PROCEEDINGS 6 _____ 7 ROB WILLS, ESQ., 8 (Having been called to appear via 9 remote videoconference, declared his 10 testimony to be truthful under penalty 11 of perjury.) 12 — 13 EXAMINATION 14 BY MR. BROWN: 15 Q. Would you state your full name for 16 the record. 17 A. Sure. James Robert Wills, IV. 18 Q. Mr. Wills, I'm counsel for Highland 19 Capital Management L.P. I think I'll be 20 referring to that entity, the Debtor, 21 throughout the deposition as Highland. 22 Will you understand what I mean 23 when I refer to Highland as the Debtor? 24 A. Yes, sir. 25 Q. And your last name is pronounced</p>	<p style="text-align: right;">Page 7</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Willis? 3 A. Wills. 4 Q. Mr. Wills, you're an attorney; is 5 that correct? 6 A. Yes, sir. 7 Q. Okay. Can you tell me what your 8 current role is and position with 9 Wick Phillips? 10 A. Sure. I'm an equity partner here. 11 I'm one of two partners that run the real 12 estate group. 13 Q. Okay. Have you ever had your 14 deposition taken before? 15 A. No, sir. 16 Q. Have you ever taken a deposition 17 before? 18 A. I have. 19 Q. Okay. So can we all assume that 20 you understand the rules, and I can 21 reasonably dispense with explaining to you 22 the protocol and procedures for a deposition? 23 A. Yes. That's fine with me. 24 Q. Just very basically, you understand 25 you're under oath?</p>
<p style="text-align: right;">Page 8</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 A. Yes, sir. 3 Q. And that what you say here is like 4 what you say in a court of law? 5 A. Yes, sir. 6 Q. It's important for you to 7 understand my question. Wait until I'm 8 finished before you answer. 9 We don't want to be talking at the 10 same time because that makes for an unclear 11 record for the court reporter. 12 A. Not a problem. 13 Q. You understand all that? 14 A. Yes, sir. 15 Q. You also understand that you'll 16 have an opportunity to review the transcript 17 of this deposition and make corrections? 18 A. Yes, sir. 19 Q. Okay. And that I'll be able to 20 comment on those corrections at the time of 21 the hearing on this? 22 A. Yes, sir. 23 Q. Okay. Do you understand that 24 you've been designated as the witness for 25 Wick Phillips pursuant to Federal Rule of</p>	<p style="text-align: right;">Page 9</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Civil Procedure 30(b)(6), made applicable in 3 this proceeding by Bankruptcy Rule 9011? 4 A. Yes, sir. 5 Q. And you're aware that you're 6 required to provide complete and 7 knowledgeable answers on behalf of 8 Wick Phillips with respect to the topics that 9 have been designated in the Wick Phillips 10 Rule 30(b)(6) deposition notice? 11 A. Yes, sir. 12 Q. And you understand that your 13 responses will be binding on Wick Phillips in 14 this matter? 15 A. Yes, sir. 16 Q. And when I refer to "this matter," 17 again, at the risk of stating the obvious, 18 this deposition is being taken today in 19 connection with the Debtor's motion to 20 disqualify Wick Phillips from representing an 21 adverse party in connection with their proof 22 of claim against the Debtor in the Debtor's 23 bankruptcy case. 24 Is that your understanding? 25 A. Yes, sir.</p>

<p style="text-align: right;">Page 10</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. And you understand that what you</p> <p>3 say today in your testimony represents the</p> <p>4 testimony of the law firm of Wick Phillips</p> <p>5 rather than your personal testimony?</p> <p>6 A. Yes, sir, I do.</p> <p>7 Q. Okay. Do you know how you were</p> <p>8 selected as Wick Phillips' designated witness</p> <p>9 in connection with the disqualification</p> <p>10 motion?</p> <p>11 MR. MARTIN: I'm going to object</p> <p>12 and instruct the witness not to answer</p> <p>13 based on the question of privilege.</p> <p>14 That's the law firm's privilege and</p> <p>15 we're not going to waive it.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Well, do you – can you answer that</p> <p>18 question without disclosing the privilege?</p> <p>19 A. I'm one of two partners in the real</p> <p>20 estate section of the firm. This is a real</p> <p>21 estate matter that we handled.</p> <p>22 Q. Okay. What have you done to become</p> <p>23 prepared to provide complete, knowledgeable,</p> <p>24 and binding answers to the questions relating</p> <p>25 to the topics in the deposition notice?</p>	<p style="text-align: right;">Page 11</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I reviewed the Motion to Disqualify</p> <p>3 and the Brief in Support, my firm's</p> <p>4 Opposition in that brief; as well as talking</p> <p>5 with D.C. Sauter, a former partner of mine;</p> <p>6 Rachel Sam, a current partner of mine; and</p> <p>7 reviewing the exhibits and declarations</p> <p>8 attached to all the briefs, as well as our</p> <p>9 internal files and – in relation.</p> <p>10 Q. Okay. How much time did you spend</p> <p>11 preparing for this deposition?</p> <p>12 A. It was over a couple of days. I</p> <p>13 would say several hours.</p> <p>14 Q. About five?</p> <p>15 A. I would say right about there.</p> <p>16 MR. BROWN: Could the court</p> <p>17 reporter mark Exhibit A?</p> <p>18 THE REPORTER: As Exhibit A?</p> <p>19 MR. BROWN: Sure. Mark Exhibit A</p> <p>20 as Exhibit A.</p> <p>21 (Amended Notice of 30(b)(6)</p> <p>22 Deposition, marked as Exhibit A.)</p> <p>23 BY MR. BROWN:</p> <p>24 Q. And housekeeping matter. I don't</p> <p>25 know –</p>
<p style="text-align: right;">Page 12</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 (Brief interruption.)</p> <p>3 BY MR. BROWN:</p> <p>4 Q. So Mr. Wills, do you have this in</p> <p>5 front of you or are you just looking at it on</p> <p>6 the screen?</p> <p>7 A. No. I've got the exhibits in front</p> <p>8 of me. It's also on the screen.</p> <p>9 Q. Okay. So have you seen this? It's</p> <p>10 called Debtor's Amended Notice of 30(b)(6)</p> <p>11 Deposition to Wick Phillips Gould &amp; Martin</p> <p>12 LLP.</p> <p>13 Have you seen this before?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And have you reviewed it?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And if you scroll down to page 4,</p> <p>18 that sets forth the topics that you have been</p> <p>19 designated as the witness for Wick Phillips</p> <p>20 on.</p> <p>21 Have you reviewed those topics?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And are you prepared to testify as</p> <p>24 Wick Phillips' designated witness on those</p> <p>25 topics today?</p>	<p style="text-align: right;">Page 13</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Very good.</p> <p>4 During the deposition today, you</p> <p>5 are required to answer the questions</p> <p>6 truthfully. If you don't know the answer to</p> <p>7 a question, that is a legitimate response if</p> <p>8 it's a truthful response, and I'm sure you</p> <p>9 know that.</p> <p>10 But I want to make sure you</p> <p>11 understand that if you say "I don't know" as</p> <p>12 an answer to one of the questions about the</p> <p>13 topics that have been designated, that I can</p> <p>14 consider that and advance the argument at the</p> <p>15 hearing that that is an admission by</p> <p>16 Wick Phillips that Wick Phillips doesn't have</p> <p>17 any knowledge or position with respect to the</p> <p>18 question that you answer "I don't know" on,</p> <p>19 and that I can argue that Wick Phillips can</p> <p>20 be precluded – should be precluded from</p> <p>21 offering documents, evidence, or testimony at</p> <p>22 the hearing on that matter.</p> <p>23 Do you understand that?</p> <p>24 A. I do.</p> <p>25 Q. In this deposition, I may get a</p>

<p style="text-align: right;">Page 14</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 little sloppy and use the term "you" rather</p> <p>3 than "Wick Phillips." But because of the</p> <p>4 nature of this deposition, when I do use the</p> <p>5 term "you," I'm going to be referring to</p> <p>6 Wick Phillips unless I specifically say I</p> <p>7 want your knowledge rather than</p> <p>8 Wick Phillips'.</p> <p>9 Do you understand that?</p> <p>10 A. Yes, sir.</p> <p>11 MR. BROWN: Ms. Vosburgh, can you</p> <p>12 please mark Exhibit B as Exhibit B.</p> <p>13 (SE Multifamily Holdings LLC,</p> <p>14 Limited Liability Company</p> <p>15 Agreement, August 23, 2018, marked</p> <p>16 as Exhibit B.)</p> <p>17 BY MR. BROWN:</p> <p>18 Q. Mr. Wills, what has been marked as</p> <p>19 Exhibit B is a copy of the SE Multifamily</p> <p>20 Holdings LLC, Limited Liability Company</p> <p>21 Agreement, dated August 23, 2018.</p> <p>22 Have you seen this document before?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And in what context did you see it?</p> <p>25 A. In connection with this motion.</p>	<p style="text-align: right;">Page 15</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. So is it accurate to say that</p> <p>3 before you started preparing to be the Rule</p> <p>4 30(b)(6) witness of Wick Phillips, you had</p> <p>5 not seen this document before?</p> <p>6 A. That's correct.</p> <p>7 Q. So you personally, as opposed to</p> <p>8 Wick Phillips, have had no role in connection</p> <p>9 with this document, the preparation or</p> <p>10 negotiation of this document, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Do you understand what</p> <p>13 Wick Phillips' role, if any, was in</p> <p>14 connection with this document?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. Could you tell me what</p> <p>17 Wick Phillips' role was in connection with</p> <p>18 the SE Multifamily Holdings Limited Liability</p> <p>19 Company Agreement, which is Exhibit B.</p> <p>20 A. Yes. Our – Wick Phillips' role</p> <p>21 was using this LLC Agreement in connection</p> <p>22 with the financing of the Project Unicorn</p> <p>23 transaction.</p> <p>24 Q. Okay. Do you know what the purpose</p> <p>25 of the SE Family Holdings – let me make this</p>
<p style="text-align: right;">Page 16</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 simpler.</p> <p>3 For this deposition, I would like</p> <p>4 to refer to the SE Multifamily Holdings LLC</p> <p>5 Limited Liability Company Agreement as the</p> <p>6 LLC Agreement.</p> <p>7 Is that acceptable to you, and will</p> <p>8 we be talking about the same thing when we</p> <p>9 talk about the LLC Agreement?</p> <p>10 A. Sure. That works great.</p> <p>11 Q. What was the purpose of the</p> <p>12 LLC Agreement?</p> <p>13 A. The purpose of the LLC Agreement</p> <p>14 was, again, to use in connection with the</p> <p>15 Project Unicorn structuring for the financing</p> <p>16 of those acquisitions.</p> <p>17 Q. Do you know who the parties were to</p> <p>18 the LLC Agreement?</p> <p>19 A. I know who the parties are from</p> <p>20 reading the agreement, but I can't list them.</p> <p>21 Q. Okay. So I think that Highland was</p> <p>22 one of the parties. And the other party was</p> <p>23 an entity known as HCRE Partners LLC.</p> <p>24 Is that your understanding?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 17</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. Okay. So – and I'm going to refer</p> <p>3 to HCRE Partners, LLC throughout this</p> <p>4 deposition as "HCRE."</p> <p>5 Will you understand what I'm</p> <p>6 talking about and will we be talking about</p> <p>7 the same thing when I refer to HCRE?</p> <p>8 A. Yes.</p> <p>9 Q. It's just the counterparty to</p> <p>10 Highland in the LLC Agreement, or the other</p> <p>11 party to the LLC Agreement.</p> <p>12 Did Wick Phillips have any role in</p> <p>13 connection with the negotiation and drafting</p> <p>14 of the LLC Agreement?</p> <p>15 A. No, sir.</p> <p>16 Q. Okay. It didn't represent any</p> <p>17 party?</p> <p>18 A. Not at – no, sir.</p> <p>19 Q. Okay. So it didn't represent</p> <p>20 either Highland or HCRE, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you know if Wick Phillips had</p> <p>23 any communications with either of the parties</p> <p>24 to the LLC Agreement while the agreement was</p> <p>25 being negotiated and drafted?</p>

<p style="text-align: right;">Page 18</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I'm not sure. I don't know.</p> <p>3 Q. Okay. Did Wick Phillips have</p> <p>4 occasion to at any time need to become aware</p> <p>5 of the ownership percentages as between the</p> <p>6 Debtor, Highland, and HCRE, that were</p> <p>7 allocated in the LLC Agreement?</p> <p>8 A. My suspicion would be in connection</p> <p>9 with the financing, the Loan Agreement with</p> <p>10 KeyBank and with Freddie, Freddie Mac,</p> <p>11 obviously, the organizational structure is</p> <p>12 important to those lenders and, to a certain</p> <p>13 extent, attached to those loan agreements.</p> <p>14 And so as it relates to that, yes,</p> <p>15 sir.</p> <p>16 Q. And do you know what the</p> <p>17 ownership – does Wick Phillips know what the</p> <p>18 ownership percentages were in connection with</p> <p>19 the LLC Agreement?</p> <p>20 A. I know what the LLC Agreement says,</p> <p>21 yes, sir.</p> <p>22 Q. And what does the LLC Agreement</p> <p>23 say?</p> <p>24 A. It says –</p> <p>25 Q. I think if we flip to page 18,</p>	<p style="text-align: right;">Page 19</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 scroll to page 18 of the LLC Agreement...</p> <p>3 A. Yes, sir. Yes, sir.</p> <p>4 Do you want me to read that?</p> <p>5 Q. Yeah, sure.</p> <p>6 A. It says that HCRE Partners, LLC has</p> <p>7 a percentage interest of 51 percent, and</p> <p>8 Highland Capital Management L.P. has a</p> <p>9 percentage interest of 49 percent.</p> <p>10 Q. Okay. And do you have any</p> <p>11 understanding if those percentages were</p> <p>12 correct or incorrect at the time the Limited</p> <p>13 Partnership Agreement was executed?</p> <p>14 A. I assume they were correct at the</p> <p>15 time, yes, sir.</p> <p>16 Q. Did Wick Phillips have any</p> <p>17 communications with HCRE concerning the</p> <p>18 capital contributions required by the</p> <p>19 LLC Agreement?</p> <p>20 A. No, sir.</p> <p>21 Q. Did Wick Phillips have any</p> <p>22 communications with HCRE concerning the</p> <p>23 ownership interests set forth in the</p> <p>24 LLC Agreement?</p> <p>25 A. Only in connection with – as a</p>
<p style="text-align: right;">Page 20</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 conduit to KeyBank or Freddie Mac in terms of</p> <p>3 who owns what.</p> <p>4 Q. Okay. We'll talk about that later,</p> <p>5 then, when we talk about the KeyBank</p> <p>6 Loan Agreement.</p> <p>7 A. Okay.</p> <p>8 Q. But no communications –</p> <p>9 Wick Phillips had no communications with the</p> <p>10 parties with respect to the ownership</p> <p>11 interests limited – if we limit that to the</p> <p>12 context of just the LLC Agreement, its</p> <p>13 drafting, negotiation, formation; is that</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And the same answer if, instead of</p> <p>17 asking about ownership percentages, I asked</p> <p>18 about contributions?</p> <p>19 A. Yes, sir. Same answer.</p> <p>20 MR. BROWN: Okay. Ms. Vosburgh,</p> <p>21 can we mark Exhibit C as Exhibit C.</p> <p>22 (Bridge Loan Agreement, September</p> <p>23 26, 2018, marked as Exhibit C.)</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Okay. So Mr. Wills, up on the</p>	<p style="text-align: right;">Page 21</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 screen – and I think you have a binder of</p> <p>3 exhibits, I assume?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So up on the screen marked as</p> <p>6 Exhibit C, and hopefully in your binder also</p> <p>7 as Exhibit C, is a document called the Bridge</p> <p>8 Loan Agreement dated as of September 26,</p> <p>9 2018, among a group of entities set forth on</p> <p>10 the agreement that I won't repeat, who are</p> <p>11 the borrowers, and also the lender, KeyBank</p> <p>12 National Association, as agent, and KeyBanc</p> <p>13 Capital Markets as the sole lead arranger and</p> <p>14 bookrunner.</p> <p>15 Is that the document you have as</p> <p>16 Exhibit C?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. Have you ever seen this</p> <p>19 document before?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. Are you familiar with it?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Is it a true copy of – let's –</p> <p>24 this Exhibit C, for the rest of the</p> <p>25 deposition, I'm going to refer to it as the</p>

<p style="text-align: right;">Page 22</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Loan Agreement.</p> <p>3 And will you understand and be</p> <p>4 comfortable referring to Exhibit C as the</p> <p>5 Loan Agreement?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Is this a true copy of the</p> <p>8 Loan Agreement?</p> <p>9 A. Yes, sir. I believe so.</p> <p>10 Q. Okay. Did Wick Phillips have any</p> <p>11 role in connection with the Loan Agreement?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Can you describe the role that</p> <p>14 Wick Phillips played in connection with the</p> <p>15 Loan Agreement?</p> <p>16 A. Sure. We helped the property-level</p> <p>17 borrowers here in connection with the</p> <p>18 Project Unicom acquisition.</p> <p>19 This – the Loan Agreement that</p> <p>20 we're looking at was for a bucket of</p> <p>21 properties that could not get agency</p> <p>22 financing through Freddie Mac. So we needed</p> <p>23 KeyBank to come in and provide sort of some</p> <p>24 additional financing in connection with the</p> <p>25 Project Unicom closing.</p>	<p style="text-align: right;">Page 23</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. Okay. Did Wick Phillips represent</p> <p>3 Highland in connection with the KeyBank – in</p> <p>4 connection with the Loan Agreement?</p> <p>5 A. Highland is a co-borrower, but not</p> <p>6 separately, no, sir.</p> <p>7 Q. Okay. So is the answer to the</p> <p>8 question did Wick Phillips represent Highland</p> <p>9 in connection with the Loan Agreement yes or</p> <p>10 no?</p> <p>11 A. No. No, sir.</p> <p>12 Q. It had no representation of</p> <p>13 Highland?</p> <p>14 A. That's correct.</p> <p>15 Q. Can you turn to – let's flip to</p> <p>16 page 3 of the Loan Agreement.</p> <p>17 Okay. So I want to focus you on</p> <p>18 the term "Borrower" under the Loan Agreement.</p> <p>19 A. Okay.</p> <p>20 Q. Do you see where the term</p> <p>21 "Borrower" is defined to include</p> <p>22 Highland Capital?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And Highland Capital has been</p> <p>25 defined earlier in the Loan Agreement, has it</p>
<p style="text-align: right;">Page 24</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 not, as Highland Capital Management, L.P.?</p> <p>3 A. Correct.</p> <p>4 Q. So Highland, the Debtor, was a</p> <p>5 borrower under the Loan Agreement, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did Wick Phillips represent the</p> <p>8 borrowers under the Loan Agreement?</p> <p>9 A. Wick Phillips represented some of</p> <p>10 the borrowers.</p> <p>11 Q. Okay. And which borrowers did it</p> <p>12 not represent?</p> <p>13 A. We did not represent what we've</p> <p>14 been calling Highland.</p> <p>15 Q. Where does it say in the</p> <p>16 Loan Agreement that you didn't represent</p> <p>17 Highland?</p> <p>18 A. I don't know that the</p> <p>19 Loan Agreement would say that.</p> <p>20 Q. Okay.</p> <p>21 MR. MARTIN: I don't think he</p> <p>22 finished his answer, Counsel.</p> <p>23 MR. BROWN: I'm sorry.</p> <p>24 MR. MARTIN: The question on the</p> <p>25 table was which borrowers did</p>	<p style="text-align: right;">Page 25</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Wick Phillips not represent, and he was</p> <p>3 in the middle of providing his answer.</p> <p>4 MR. BROWN: I apologize. I didn't</p> <p>5 mean to interrupt.</p> <p>6 MR. MARTIN: That's okay.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. Can you please provide a complete</p> <p>9 answer to the question?</p> <p>10 A. Sure.</p> <p>11 Initially we represented the</p> <p>12 NexPoint entities and the property-level</p> <p>13 entities all as co-borrowers. And KeyBank</p> <p>14 needed more credit from the borrower side</p> <p>15 since this was such a large transaction, and</p> <p>16 that's when Highland Capital was added as an</p> <p>17 additional borrower to the loan.</p> <p>18 Q. Okay. Can we scroll to page 51.</p> <p>19 Can you please focus on</p> <p>20 Section 4.01(b).</p> <p>21 A. Okay.</p> <p>22 Q. This is – this discusses certain</p> <p>23 conditions to the Loan Agreement. And (b)</p> <p>24 says:</p> <p>25 "The Administrative Agent shall</p>

<p style="text-align: right;">Page 26</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 have received" – as a condition – "a  3 favorable written opinion (addressed  4 to the Administrative Agent and the  5 Lenders and dated the Effective Date)  6 of Wick Phillips Gould &amp; Martin, LLP,  7 counsel for the Borrower."  8 Is that statement referring to  9 Wick Phillips as "counsel for the borrower"  10 and referencing back to the borrower as  11 several entities, including Highland, is that  12 statement in the Loan Agreement incorrect?  13 A. I mean, that's what it says, yes,  14 sir.  15 Q. Is it incorrect?  16 A. It is incorrect as to who  17 Wick Phillips represented. It is correct in  18 terms of providing a legal opinion. You  19 wouldn't have multiple legal opinions from  20 different firms for the same borrower,  21 typically, or collection of borrowers.  22 Q. So the Loan Agreement – your  23 testimony today on behalf of Wick Phillips is  24 that this Loan Agreement, to the extent it  25 refers to Wick Phillips' representation of</p>	<p style="text-align: right;">Page 27</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 the borrower, is inaccurate to the extent the  3 borrower includes Highland; is that correct?  4 MR. MARTIN: Objection, form.  5 A. Yes, sir. That's what we're  6 saying.  7 BY MR. BROWN:  8 Q. Did Wick Phillips say anything,  9 ever raise the issue of the lack of accuracy  10 of these representations in the  11 Loan Agreement to anybody at any time?  12 MR. MARTIN: Objection to form.  13 A. Not to my knowledge.  14 BY MR. BROWN:  15 Q. Okay. Can we also scroll forward  16 to page 76. This is Article IX of the  17 Loan Agreement. Section 9.01 discusses  18 Notices.  19 And do you see at Section 9.01(a)  20 where it says, in the case of notices, "if to  21 the Borrower, in care of Highland Capital  22 Management," with copies to Wick Phillips?  23 A. Yes, sir. I see that.  24 Q. Okay. So I'm just trying to  25 ascertain Wick Phillips' position here. Is</p>
<p style="text-align: right;">Page 28</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 it that Section 9.01(a) is inaccurate to the  3 extent it reflects that Wick Phillips  4 represented Highland Capital Management in  5 connection with the Loan Agreement?  6 A. My suspicion is this was the same  7 notice provision as had been there in  8 previous loans that we had worked on – we,  9 Wick Phillips, had worked on with KeyBank.  10 And once Highland was added as a  11 co-borrower, which had not been the case  12 previously, it was not changed.  13 Q. Okay. So was Wick Phillips  14 receiving notices on behalf of  15 Highland Capital Management relating to the  16 Loan Agreement or not?  17 A. Not that I'm aware of.  18 Q. Okay. So did Wick Phillips ever  19 raise the issue with any of the parties to  20 the Loan Agreement that this Section 9.01(a)  21 of the Loan Agreement did not accurately  22 reflect the position of Wick Phillips with  23 respect to its representation of  24 Highland Capital Management?  25 MR. MARTIN: Objection, form.</p>	<p style="text-align: right;">Page 29</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 A. Well, I think we would want the  3 notices, with the borrower being a collection  4 of borrowers, of which we did represent some.  5 BY MR. BROWN:  6 Q. And why wouldn't the notices be in  7 care of the entities that you represented as  8 opposed to an entity that you didn't  9 represent?  10 A. I don't know.  11 Q. Okay. Give me a moment, please.  12 Do you have a copy of  13 Wick Phillips' Brief in Opposition to the  14 Debtor's Motion to Disqualify in front of  15 you?  16 A. Not in front of me, no, sir.  17 Q. I'm looking at it right now, and I  18 know that you have read it before.  19 And at page 4 of that Opposition,  20 Wick Phillips says:  21 "As a borrower under the bridge  22 loan, Wick Phillips was counsel to  23 HCM L.P."  24 So Wick Phillips' statement in a  25 document filed with the Court on May 6th,</p>



<p style="text-align: right;">Page 30</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 2021, is inconsistent with your testimony                  3 today, is it not?                  4 MR. MARTIN: Objection, form.                  5 A. I'm sorry. Did you say HC L.P.                  6 or --                  7 BY MR. BROWN:                  8 Q. HCM L.P., which is Highland Capital                  9 Management, L.P., the Debtor, Highland.                  10 A. Right.                  11 Q. We're calling it Highland.                  12 So in Wick Phillips' brief filed on                  13 May 6th, 2021, in opposition to the Motion to                  14 Disqualify, Wick Phillips said:                  15 "As a borrower under the bridge                  16 loan" -- which is what we're referring                  17 to as the Loan Agreement --                  18 "Wick Phillips was counsel to HCM                  19 L.P."                  20 So that is, by my lights,                  21 inconsistent with your testimony today.                  22 Can you explain why you are                  23 testifying in a manner that is not consistent                  24 with an admission Wick Phillips has already                  25 made in pleadings filed with the bankruptcy</p>	<p style="text-align: right;">Page 31</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 court?                  3 MR. MARTIN: Objection, form.                  4 A. Yes. I believe what I said was                  5 that -- I guess what we're calling here                  6 Highland is a co-borrower under this                  7 Loan Agreement that was added later on.                  8 And, yes, we did represent the                  9 co-borrowers in connection with this                  10 Loan Agreement.                  11 BY MR. BROWN:                  12 Q. Okay. So you agree, then, with the                  13 statement made in Wick Phillips' May 6th                  14 filing in opposition to the disqualification                  15 motion that Wick Phillips did represent the                  16 borrower, Highland, under the bridge loan; is                  17 that correct?                  18 A. We represented all of the borrowers                  19 as co-borrowers in this -- with this loan.                  20 Q. Okay. Other than the borrowers --                  21 other than the co-borrowers, did                  22 Wick Phillips represent any other entities in                  23 connection with the Loan Agreement?                  24 A. No, sir.                  25 Q. Okay. Does Wick Phillips have a</p>
<p style="text-align: right;">Page 32</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 retention agreement in connection with the                  3 work it did for the borrowers under the --                  4 relating to the Loan Agreement?                  5 A. No, sir.                  6 Q. Why not?                  7 A. I don't know the answer to that                  8 question.                  9 Q. Does Wick Phillips normally require                  10 retention agreements when it undertakes a                  11 client representation?                  12 A. In an ideal world, we do, yes, sir,                  13 but it's not a requirement.                  14 Q. Can you tell me what Wick Phillips'                  15 custom and practice is with respect to                  16 obtaining retention agreements when it                  17 undertakes the representation of a client?                  18 A. A similar answer. We ideally would                  19 have an engagement letter or retention                  20 letter, as you mentioned. But it is not                  21 required for us to open a matter, or a new                  22 client matter.                  23 Q. Okay. Do you personally get                  24 retention agreements from your clients when                  25 you undertake a representation?</p>	<p style="text-align: right;">Page 33</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 A. I certainly try to.                  3 Q. Do you always do it?                  4 A. I do not.                  5 Q. Did Wick Phillips obtain a conflict                  6 waiver from the borrowers, or any of them,                  7 concerning its joint representation of them                  8 in connection with the Loan Agreement?                  9 A. I don't believe so.                  10 Q. Have you ever seen a conflict                  11 waiver?                  12 A. Yes, sir.                  13 Q. I'm sorry. I didn't mean it that                  14 way. That's the problem with lawyers.                  15 They're too literal.                  16 Have you ever seen a conflict                  17 waiver in connection with the Loan Agreement?                  18 A. No, sir.                  19 Q. Okay. Did you have -- in your                  20 preparation for this deposition and to be the                  21 designated witness of Wick Phillips, was                  22 there any discussion or reference to a                  23 conflict waiver among Wick Phillips' joint                  24 clients relating to the Loan Agreement?                  25 A. Not that I'm aware of.</p>

<p style="text-align: right;">Page 34</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. Do you know whether Wick Phillips</p> <p>3 considered whether a conflict waiver was</p> <p>4 necessary because of the joint representation</p> <p>5 of clients under the Loan Agreement?</p> <p>6 A. I do not.</p> <p>7 Q. Do you know if Wick Phillips</p> <p>8 undertook any analysis to determine if the</p> <p>9 joint representation of the borrowers</p> <p>10 presented a conflict or a potential conflict</p> <p>11 for which a conflict waiver was required?</p> <p>12 A. I do not.</p> <p>13 Q. You don't know if it was done?</p> <p>14 A. I don't know.</p> <p>15 Q. Okay. Were there any discussions</p> <p>16 of the issue of the advisability or necessity</p> <p>17 of a conflict waiver in connection with the</p> <p>18 Loan Agreement that Wick Phillips had?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Do you -- is Wick Phillips familiar</p> <p>21 with the Texas Rules of Professional Conduct,</p> <p>22 Section 1.07?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And do you know if it's familiar</p> <p>25 with Section 1.07(a) that requires written</p>	<p style="text-align: right;">Page 35</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 consent for common representations?</p> <p>3 MR. MARTIN: Objection, form.</p> <p>4 A. Yes, sir.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. And do you know why Wick Phillips</p> <p>7 did not obtain a written conflict waiver in</p> <p>8 conformity and compliance with</p> <p>9 Section 1.07 --</p> <p>10 MR. MARTIN: Objection, form.</p> <p>11 BY MR. BROWN:</p> <p>12 Q. -- in connection with the joint</p> <p>13 representation of clients under the</p> <p>14 Loan Agreement?</p> <p>15 MR. MARTIN: Same objection.</p> <p>16 A. I do not know.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. Do you know if Wick Phillips had</p> <p>19 any discussions with any of the borrowers --</p> <p>20 as that term is defined under the</p> <p>21 Loan Agreement -- about actual or potential</p> <p>22 conflicts that could arise from</p> <p>23 Wick Phillips' joint representation of them</p> <p>24 under the Loan Agreement?</p> <p>25 A. I don't.</p>
<p style="text-align: right;">Page 36</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. Did Wick Phillips undertake any</p> <p>3 analysis of its responsibilities in</p> <p>4 connection with the joint representation and</p> <p>5 whether the representation could be</p> <p>6 undertaken without an improper impact on its</p> <p>7 responsibilities?</p> <p>8 MR. MARTIN: Objection, form.</p> <p>9 A. I'm not aware of that.</p> <p>10 BY MR. BROWN:</p> <p>11 Q. Did Wick Phillips consult with any</p> <p>12 of the borrowers concerning the implications</p> <p>13 of the joint representation, for example, on</p> <p>14 the attorney-client privilege?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if Wick Phillips</p> <p>17 consulted with any of the borrowers</p> <p>18 concerning the advantages and risks to them</p> <p>19 individually of having Wick Phillips jointly</p> <p>20 represent them in connection with the Loan</p> <p>21 Agreement?</p> <p>22 MR. MARTIN: Objection, form.</p> <p>23 A. I don't know.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Do you have any understanding of</p>	<p style="text-align: right;">Page 37</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 whether the representation -- well, as you</p> <p>3 sit here today on behalf of Wick Phillips, do</p> <p>4 you have an opinion on whether or not the</p> <p>5 joint representation of the multiple</p> <p>6 borrowers under the Loan Agreement gave rise</p> <p>7 to any actual or potential conflicts?</p> <p>8 MR. MARTIN: Objection, form.</p> <p>9 A. I don't have an opinion.</p> <p>10 BY MR. BROWN:</p> <p>11 Q. Do you understand that HCRE was</p> <p>12 designated as the lead borrower under the</p> <p>13 Loan Agreement?</p> <p>14 A. Yes, sir.</p> <p>15 Q. It was, to your understanding,</p> <p>16 designated as the lead borrower?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Can we -- let's see.</p> <p>19 MS. CANTY: Ken, if you tell me the</p> <p>20 section, I can probably jump to it</p> <p>21 quickly.</p> <p>22 MR. BROWN: Yeah. It's</p> <p>23 Section 1.05, page 14.</p> <p>24 MS. CANTY: Sorry. I have it as</p> <p>25 page 25.</p>

<p style="text-align: right;">Page 38</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. BROWN: No, I'm sorry. That –</p> <p>3 let's first –</p> <p>4 Okay. That's fine. That's fine.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. So if you – could you review this</p> <p>7 Section 1.05, Mr. Wills.</p> <p>8 A. Sure. (Reviewing document.)</p> <p>9 Okay.</p> <p>10 Q. Okay. Did you have a chance to</p> <p>11 look at both (a) and (b) of Section 1.05?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. So the lead borrower under</p> <p>14 the Loan Agreement is HCRE, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And this Section 1.05 talks about</p> <p>17 the appointment of the lead borrower and some</p> <p>18 of the rights and obligations of the lead</p> <p>19 borrower, correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And Section (b) says:</p> <p>22 "The proceeds of each loan and</p> <p>23 advance provided under the Loans which</p> <p>24 is requested by the Lead Borrower</p> <p>25 shall be advanced as and when</p>	<p style="text-align: right;">Page 39</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 otherwise provided herein or as</p> <p>3 otherwise indicated by the Lead</p> <p>4 Borrower."</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. And that "The Lead Borrower shall</p> <p>8 cause the transfer of the proceeds to the</p> <p>9 other borrowers on whose behalf such loan and</p> <p>10 advance was obtained."</p> <p>11 So is it your understanding that</p> <p>12 under this Loan Agreement, the lead borrower</p> <p>13 had the ability to both determine when the</p> <p>14 advances were made and to direct where the</p> <p>15 transfers went?</p> <p>16 A. Yes, sir, according to this</p> <p>17 provision.</p> <p>18 Q. Okay. And do you also have an</p> <p>19 understanding that the other borrowers,</p> <p>20 including Highland, were on the hook jointly</p> <p>21 and severally for all amounts that were</p> <p>22 borrowed under the Loan Agreement?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So, in your mind, does the fact</p> <p>25 that HCRE could determine when advances were</p>
<p style="text-align: right;">Page 40</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 made and direct how those advances were</p> <p>3 applied, while Highland was jointly and</p> <p>4 severally liable for those advances, does</p> <p>5 that give rise to a conflict or potential</p> <p>6 conflict between Highland and HCRE?</p> <p>7 MR. MARTIN: Objection, form.</p> <p>8 A. No, sir, not in my opinion.</p> <p>9 BY MR. BROWN:</p> <p>10 Q. Okay. Why not?</p> <p>11 A. Well, my understanding is the</p> <p>12 Highland entity is more – was added as a</p> <p>13 borrower more in a guarantee/guarantor</p> <p>14 context. And so the HCRE, or the lead</p> <p>15 borrower, would just be directing the funds</p> <p>16 to the property-level borrowers in connection</p> <p>17 with each of the various acquisitions.</p> <p>18 Q. Do you know that's what occurred?</p> <p>19 A. That's the setup of the</p> <p>20 Loan Agreement.</p> <p>21 Q. Do you have any knowledge on</p> <p>22 whether HCRE used moneys that it obtained</p> <p>23 under the Loan Agreement to make a capital</p> <p>24 contribution to the Limited Partnership?</p> <p>25 A. I don't have that knowledge, no,</p>	<p style="text-align: right;">Page 41</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 sir.</p> <p>3 Q. You don't know one way or the</p> <p>4 other?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you know if Wick Phillips ever</p> <p>7 explained to any of the borrowers the</p> <p>8 operation of the Loan Agreement to the extent</p> <p>9 that it permitted HCRE to direct the</p> <p>10 advances, but that all of the other borrowers</p> <p>11 were liable under the Loan Agreement,</p> <p>12 irrespective of how the advances were</p> <p>13 directed?</p> <p>14 MR. MARTIN: Objection, form.</p> <p>15 A. I don't know.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Did Wick Phillips ever advise</p> <p>18 Highland that it was liable for all amounts</p> <p>19 due under the Loan Agreement whether or not</p> <p>20 it received the proceeds or received the</p> <p>21 benefit of the proceeds?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you know whether or not Highland</p> <p>24 received the benefit of the proceeds advanced</p> <p>25 under the Loan Agreement?</p>

<p style="text-align: right;">Page 42</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I don't.</p> <p>3 Q. Who was Wick Phillips' client</p> <p>4 contact at HCRE in connection with the</p> <p>5 Loan Agreement?</p> <p>6 A. I believe there were several that</p> <p>7 we typically deal with, Matt Goetz,</p> <p>8 Matt McGraner. Freddy Chang was at one point</p> <p>9 some form of in-house counsel there.</p> <p>10 Q. So Matt Goetz. Do you know if</p> <p>11 Matt Goetz was an employee of Highland?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you know who he was employed by?</p> <p>14 A. I don't.</p> <p>15 Q. What about Mr. McGraner; do you</p> <p>16 know if he was an employee of Highland?</p> <p>17 A. I don't.</p> <p>18 Q. Do you know if he was an employee</p> <p>19 of HCRE?</p> <p>20 A. I do not.</p> <p>21 Q. What about Freddy Chang; do you</p> <p>22 know if he was an employee of Highland?</p> <p>23 A. I don't.</p> <p>24 Q. Do you know if he was an employee</p> <p>25 of HCRE?</p>	<p style="text-align: right;">Page 43</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I do not.</p> <p>3 Q. You understand you're testifying on</p> <p>4 behalf of Wick Phillips right now, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Who was Wick Phillips' client</p> <p>7 contact at Highland in connection with the</p> <p>8 Loan Agreement?</p> <p>9 A. I don't believe we have a client</p> <p>10 contact for Highland.</p> <p>11 Q. And why was that?</p> <p>12 A. We -- I mean, our silo is the real</p> <p>13 estate silo for NexPoint that handles loan</p> <p>14 agreements like we're looking at right now.</p> <p>15 Highland is a separate part of that company.</p> <p>16 Q. But Wick Phillips has already</p> <p>17 acknowledged in its Opposition that it</p> <p>18 represented Highland in connection with the</p> <p>19 Loan Agreement. And I'm just trying to</p> <p>20 establish whether, in connection with that</p> <p>21 acknowledged representation, Wick Phillips</p> <p>22 had a client contact at Highland.</p> <p>23 And so the question is did</p> <p>24 Wick Phillips have a client contact and, if</p> <p>25 so, who?</p>
<p style="text-align: right;">Page 44</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. No client contact. Okay.</p> <p>4 Did Wick Phillips have contact with</p> <p>5 James Dondero in connection with the</p> <p>6 Loan Agreement?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Okay. With respect to Mr. Goetz,</p> <p>9 who you did indicate was a client contact for</p> <p>10 HCRE --</p> <p>11 MR. MARTIN: Objection, form.</p> <p>12 BY MR. BROWN:</p> <p>13 Q. -- how did Wick Phillips determine</p> <p>14 what hat, if you will, Mr. Goetz was wearing</p> <p>15 and what entity he was speaking on behalf of,</p> <p>16 communicating on behalf of?</p> <p>17 MR. MARTIN: Objection, form.</p> <p>18 A. My assumption is wearing a NexPoint</p> <p>19 hat, as typically is the case.</p> <p>20 BY MR. BROWN:</p> <p>21 Q. And what is that assumption based</p> <p>22 on?</p> <p>23 A. Our prior representations and</p> <p>24 dealings.</p> <p>25 Q. But is it true that in connection</p>	<p style="text-align: right;">Page 45</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 with this representation, Wick Phillips'</p> <p>3 representation of the borrowers under the</p> <p>4 Loan Agreement, you don't know how</p> <p>5 Wick Phillips made a determination of what</p> <p>6 hat the individuals it spoke to were wearing,</p> <p>7 do you?</p> <p>8 MR. MARTIN: Objection, form.</p> <p>9 A. I don't know if a determination was</p> <p>10 made at all, no, sir.</p> <p>11 BY MR. BROWN:</p> <p>12 Q. And do you know whether</p> <p>13 Wick Phillips made any distinction in terms</p> <p>14 of people that -- the client contacts it</p> <p>15 communicated with in connection with the</p> <p>16 Loan Agreement, whether it made any</p> <p>17 distinction whether those individuals were</p> <p>18 communicating with it on behalf of Highland</p> <p>19 or HCRE?</p> <p>20 MR. MARTIN: Objection, form.</p> <p>21 A. I don't know.</p> <p>22 MR. MARTIN: Is now a good time to</p> <p>23 take a break?</p> <p>24 (Recess taken.)</p> <p>25</p>

<p style="text-align: right;">Page 46</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Mr. Wills, do you know what the</p> <p>4 purpose of the Loan Agreement was?</p> <p>5 A. To provide financing in connection</p> <p>6 with the Project Unicorn property</p> <p>7 acquisitions.</p> <p>8 Q. Which was going to be done by the</p> <p>9 LLC? The acquisitions were going to be by</p> <p>10 the LLC?</p> <p>11 A. By some subsidiaries, but yes, sir.</p> <p>12 Q. And do you know what HCRE's role</p> <p>13 was in connection with the Loan Agreement?</p> <p>14 A. They were the lead borrower.</p> <p>15 Q. Okay. And we've already talked</p> <p>16 about to some extent what that involved.</p> <p>17 Do you know what Highland's role</p> <p>18 was in connection with the Loan Agreement?</p> <p>19 A. It's a little bit like I've already</p> <p>20 mentioned, but primarily to provide more</p> <p>21 credit to the borrowing base, to the</p> <p>22 collective definition of "borrower."</p> <p>23 Q. Do you know whether the ownership</p> <p>24 structure of the Limited Partnership was an</p> <p>25 issue that was addressed in the</p>	<p style="text-align: right;">Page 47</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Loan Agreement?</p> <p>3 A. The Highland Limited Partnership?</p> <p>4 Q. I'm sorry. Do you know – let me</p> <p>5 rephrase the question. I misstated it.</p> <p>6 Do you know whether or not the</p> <p>7 ownership interests between – as and between</p> <p>8 Highland and HCRE in the LLC was an issue</p> <p>9 that was part of the Loan Agreement?</p> <p>10 A. I'm not sure I understand your</p> <p>11 question. I apologize.</p> <p>12 Q. Okay. Did the ownership interest</p> <p>13 in the LLC between Highland and HCRE – was</p> <p>14 that a component of the Loan Agreement?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And in what way?</p> <p>17 A. Just as far as which party was</p> <p>18 51 percent and which was 49 percent.</p> <p>19 Q. I'd like to scroll to Schedule 3.15</p> <p>20 of the Loan Agreement.</p> <p>21 MS. CANTY: Do you know which page</p> <p>22 that's on, Ken?</p> <p>23 Never mind. I see it.</p> <p>24 MR. BROWN: Yeah.</p> <p>25</p>
<p style="text-align: right;">Page 48</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Okay. Let's go back to the prior</p> <p>4 page, the caption page, Schedule 3.15.</p> <p>5 Okay. Mr. Wills, are you familiar</p> <p>6 with Schedule 3.15?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What role did Wick Phillips have in</p> <p>9 connection with Schedule 3.15 of the</p> <p>10 Loan Agreement?</p> <p>11 A. We provided these – the</p> <p>12 attachments to KeyBank to attach here as the</p> <p>13 schedule.</p> <p>14 Q. Okay. Let's look at the</p> <p>15 attachments.</p> <p>16 MR. BROWN: Flip – if we could</p> <p>17 flip to the very next page.</p> <p>18 Okay. Is there any way we could</p> <p>19 change the view on that so it's upright?</p> <p>20 Okay.</p> <p>21 BY MR. BROWN:</p> <p>22 Q. Is this one of the attachments?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And Wick Phillips prepared this</p> <p>25 attachment in connection with the</p>	<p style="text-align: right;">Page 49</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Loan Agreement?</p> <p>3 MR. MARTIN: Objection, form.</p> <p>4 A. No, sir. We provided these</p> <p>5 schedules to KeyBank.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Okay. You provided the schedules</p> <p>8 to KeyBank. Did Wick Phillips prepare the</p> <p>9 schedules?</p> <p>10 A. No, sir.</p> <p>11 Q. Did it have any – did it have any</p> <p>12 role in connection with the preparation of</p> <p>13 the schedules?</p> <p>14 A. Just as sort of the conduit between</p> <p>15 the business folks and the lender.</p> <p>16 Q. The business folks at the borrower?</p> <p>17 A. Correct.</p> <p>18 Q. So did Wick Phillips make any</p> <p>19 changes to these schedule – to the schedules</p> <p>20 attached as schedule – to Schedule 3.15, did</p> <p>21 it make any changes to them after it received</p> <p>22 them from the borrowers?</p> <p>23 A. No, sir.</p> <p>24 Q. Did it review – did it review</p> <p>25 these attachments?</p>

<p style="text-align: right;">Page 50</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. And did it make any determination</p> <p>4 as to their accuracy?</p> <p>5 A. I would assume so, yes, sir.</p> <p>6 Q. And, for example, this first</p> <p>7 schedule reflects the ownership interests of</p> <p>8 Highland and HCRE in the LLC; is that</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And it reflects the ownership</p> <p>12 interest as 49 percent for Highland and</p> <p>13 51 percent for HCRE; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And you don't have -- is it your</p> <p>16 understanding that that ownership allocation</p> <p>17 was correct at the time these schedules were</p> <p>18 prepared?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And let's scroll down to the next</p> <p>21 attachment in the schedule.</p> <p>22 This is the second attachment. At</p> <p>23 the bottom it says it's for Gulfstream Isles.</p> <p>24 Do you see that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 51</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. And that would be a reference to</p> <p>3 the underlying property that was being</p> <p>4 acquired; is that correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And, again, the ownership</p> <p>7 percentages for HCRE and Highland in the LLC</p> <p>8 are reflected as the same, 51 for HCRE and</p> <p>9 49 percent for Highland. Correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And based on your prior review of</p> <p>12 these attachments as Schedule 3.15, your</p> <p>13 recollection is that they all -- I think</p> <p>14 there's 22 of them, and they all reflect the</p> <p>15 same ownership percentage in the LLC; is that</p> <p>16 correct?</p> <p>17 A. I think so, yes, sir. We can flip</p> <p>18 through them, but I assume so.</p> <p>19 Q. Yeah. Why don't we just briefly</p> <p>20 flip through them. If we go to the next one.</p> <p>21 Again, this is for Victoria Park.</p> <p>22 Same ownership percentage reflected</p> <p>23 there, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And the next one, this is for the</p>
<p style="text-align: right;">Page 52</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Reserve at River Walk.</p> <p>3 Same ownership percentage reflected</p> <p>4 there, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. The next one, Heights at</p> <p>7 Olde Towne.</p> <p>8 Same ownership percentage reflected</p> <p>9 there, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. I don't think we have to</p> <p>12 flip further after these. They say what they</p> <p>13 say.</p> <p>14 A. Okay.</p> <p>15 MR. MARTIN: Mr. Brown, I don't</p> <p>16 pretend to know as much about these</p> <p>17 transactions as you certainly do, but I</p> <p>18 do believe that starting with some of</p> <p>19 the properties towards the back, there</p> <p>20 are -- while some of the ownership</p> <p>21 percentages may be the same, you may</p> <p>22 want to go over them. Governors Green,</p> <p>23 Stoney Ridge, Oak Mill --</p> <p>24 MR. BROWN: Okay.</p> <p>25 MR. MARTIN: The structures do</p>	<p style="text-align: right;">Page 53</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 change a little bit.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. Okay. We can do that. Let's look</p> <p>5 through each one of them. Let's just do a</p> <p>6 page flip.</p> <p>7 Again, this is Governors Green.</p> <p>8 With respect to the interests that</p> <p>9 are reflected in the LLC, they're the same,</p> <p>10 correct, for Highland and HCRE, as the</p> <p>11 others, 49 percent and 51 percent</p> <p>12 respectively?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. Let's go down to the next</p> <p>15 one, Stoney Ridge.</p> <p>16 Again, focusing just on the</p> <p>17 ownership interest in the LLC, it's reflected</p> <p>18 as 49 percent Highland and 51 percent HCRE,</p> <p>19 correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And the next one, Oak Mill.</p> <p>22 Again, focusing just on the LLC,</p> <p>23 the ownership interest is reflected at</p> <p>24 49 percent for Highland and 51 percent for</p> <p>25 HCRE. Correct?</p>

<p style="text-align: right;">Page 54</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. And the next one, which is</p> <p>4 Battleground Park, and focusing again on the</p> <p>5 LLC, the ownership interests are reflected as</p> <p>6 49 percent Highland, 51 percent HCRE.</p> <p>7 Correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And for Lakes at Renaissance Park,</p> <p>10 again focusing on the LLC, the ownership</p> <p>11 percentage is reflected as 49 percent</p> <p>12 Highland and 51 percent HCRE, correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And for Brandywine – huh. Unless</p> <p>15 I'm missing something, this doesn't even</p> <p>16 address the LLC interests.</p> <p>17 MR. MARTIN: That's one of the</p> <p>18 reasons I was asking.</p> <p>19 MR. BROWN: Pardon me?</p> <p>20 MR. MARTIN: That's one of the</p> <p>21 reasons I was asking.</p> <p>22 MR. BROWN: Yeah. Yeah.</p> <p>23 MR. MARTIN: I know you're trying</p> <p>24 to make your record and I'm not trying</p> <p>25 to interrupt you.</p>	<p style="text-align: right;">Page 55</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. BROWN: Thank you. I</p> <p>3 appreciate it.</p> <p>4 BY MR. BROWN:</p> <p>5 Q. So Brandywine just doesn't – in</p> <p>6 this chart, the LLC is not even shown,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Scroll to the next one, please.</p> <p>10 This one, which is</p> <p>11 Glenview Reserve, with respect to the LLC, it</p> <p>12 reflects the same ownership percentage,</p> <p>13 49 percent in Highland and 51 percent in</p> <p>14 HCRE, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Scroll down, please.</p> <p>17 And, again, this is for Andros</p> <p>18 Isles.</p> <p>19 And with respect to the LLC, it is</p> <p>20 again reflecting and repeating the same</p> <p>21 ownership percentage of 49 percent in</p> <p>22 Highland and 51 percent in HCRE. Correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Again, this is Arborwalk.</p> <p>25 And with respect to the LLC, the</p>
<p style="text-align: right;">Page 56</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 same ownership percentages are reflected for</p> <p>3 Highland and HCRE as on the prior charts,</p> <p>4 correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. For Walker Ranch, which is the next</p> <p>7 page, the same ownership percentages are</p> <p>8 reflected for the LLC as on the prior charts,</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And with respect to Towne Crossing,</p> <p>12 the next page, the same ownership percentages</p> <p>13 are reflected in the LLC, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And with respect to the next page,</p> <p>16 West Place, the same LLC percentages are</p> <p>17 reflected for Highland and HCRE, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And the next page, Vista Ridge, the</p> <p>20 same LLC percentages – the same ownership</p> <p>21 percentages are reflected for Highland as</p> <p>22 HCRE as on the prior charts, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Next page, which is Hidden Lake.</p> <p>25 With respect to the LLC, the same</p>	<p style="text-align: right;">Page 57</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 ownership percentages are reflected for HCRE</p> <p>3 and Highland as on the prior charts, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. The next page, Arbolita.</p> <p>6 With respect to the LLC, the same</p> <p>7 ownership percentages are reflected, correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Next page, Fairways.</p> <p>10 With respect to the LLC, the same</p> <p>11 ownership percentages are reflected, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. The next page, with respect to</p> <p>14 Grand Oasis, it's the same ownership</p> <p>15 percentages as on the prior charts, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And with respect to</p> <p>18 Summers Landing, there is no indication</p> <p>19 here – no reflection of the LLC in the</p> <p>20 chart; is that correct?</p> <p>21 A. Yes, sir. That's correct.</p> <p>22 Q. Okay. I think that takes us</p> <p>23 through it. And I apologize for dragging</p> <p>24 everybody through that, but your counsel is</p> <p>25 correct that they're not all – they did not</p>

<p style="text-align: right;">Page 58</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 all reflect the ownership interests in the 3 LLC. 4 But is it correct to say that, with 5 respect to Schedule 3.15 of the 6 Loan Agreement, and the charts reflecting the 7 ownership interests of the subsidiaries that 8 do address the ownership interest in the LLC, 9 they all identically reflect that the 10 ownership interest is 41 percent – 11 49 percent in Highland and 51 percent in 12 HCRE? 13 A. Yes, sir. 14 Q. And that's consistent with the 15 ownership interest that is set forth in the 16 LLC Agreement, correct? 17 A. Correct. 18 Q. Did you become familiar with the – 19 with Schedule 3.15 of the Loan Agreement 20 before or after your designation as the – as 21 Wick Phillips' Rule 30(b)(6) witness? 22 A. After. 23 Q. Did Wick Phillips have any 24 communications with HCRE concerning the 25 charts we just went through that comprise</p>	<p style="text-align: right;">Page 59</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Schedule 3.15 of the Loan Agreement? 3 MR. MARTIN: Objection, form. 4 A. Yes, sir. 5 BY MR. BROWN: 6 Q. And with whom did Wick Phillips 7 have those communications? 8 A. I don't recall specific names, but 9 different people within both NexPoint and 10 from the in-house team at Highland. 11 Q. And how do you – what is the 12 distinction between NexPoint and Highland in 13 Wick Phillips' mind? 14 A. The NexPoint distinction would be 15 we've always been hired in the real estate 16 silo, only operating on sort of what I would 17 call the property level. 18 And then, sort of like when we're 19 looking at the structure charts in 3.15, once 20 you get up to really the 49/51 percent 21 distinction, Mr. Brown, that you were talking 22 about, that structuring is beyond the scope 23 of our representation and typically goes to 24 in-house or a different law firm handling 25 that side of things for that portion of the</p>
<p style="text-align: right;">Page 60</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 company. 3 Q. Did Highland have separate counsel 4 in connection with the Loan Agreement? 5 A. I don't know. 6 Q. So you, testifying here on behalf 7 of Wick Phillips, you don't know any of the 8 names of the individuals with whom 9 Wick Phillips communicated relating to the 10 HCRE representation; is that correct? 11 MR. MARTIN: Objection, form. 12 A. No. That's – I don't think that's 13 exactly what I said. We've already gone over 14 a few of the Wick Phillips contacts at 15 NexPoint, Matt McGraner and Matt Goetz. 16 BY MR. BROWN: 17 Q. Yes. 18 A. In reviewing some of the 19 correspondence in preparation for this 20 deposition, yes, sir, there are some other 21 names that I'm not familiar with. My partner 22 at the time would have been having those 23 communications within the context of this 24 transaction. 25 So there's a Paul Broaddus and a</p>	<p style="text-align: right;">Page 61</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 handful of other names that I believe had a 3 role in creating some of these charts and 4 passing them along to us, but I don't recall 5 their specific names. 6 Q. Okay. So, again, we'll get to 7 those emails and so we can follow up on that. 8 But other than Mr. Geotz, 9 Mr. McGraner, Mr. Chang, and Mr. Broaddus, 10 did Wick Phillips have communications with 11 any other individuals that were 12 representatives of HCRE in connection with 13 the Loan Agreement? 14 MR. MARTIN: Objection, form. 15 A. Not that I'm aware of. 16 BY MR. BROWN: 17 Q. Okay. Did Wick Phillips have 18 communications with any individuals that were 19 representatives of Highland in connection 20 with the Loan Agreement other than Mr. Goetz, 21 Mr. – well, strike that. 22 Did Wick Phillips have any 23 communications with representatives of 24 Highland in connection with the 25 Loan Agreement?</p>



<p style="text-align: right;">Page 62</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. MARTIN: Objection, form.</p> <p>3 A. I think with Mr. Broadus and</p> <p>4 probably a handful of other folks in</p> <p>5 connection with some of these charts and</p> <p>6 structuring.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. When it spoke to, for example,</p> <p>9 Mr. Broadus, who was communicating on behalf</p> <p>10 of Highland, was there another counsel</p> <p>11 involved for Highland in the communications</p> <p>12 that Wick Phillips had for Mr. Broadus?</p> <p>13 A. I believe in connection with some</p> <p>14 of the structuring, yes, sir.</p> <p>15 Q. And who would that have been?</p> <p>16 A. I believe it was Hunton &amp; Williams.</p> <p>17 Q. So you believe that</p> <p>18 Hunton &amp; Williams was involved in the</p> <p>19 representation of Highland in connection with</p> <p>20 the Loan Agreement?</p> <p>21 MR. MARTIN: Objection, form.</p> <p>22 A. In connection with the</p> <p>23 organizational structure, yes, sir.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Are you sure you're not conflating</p>	<p style="text-align: right;">Page 63</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 that with the representation of Highland in</p> <p>3 connection with the LLC?</p> <p>4 A. No, sir. I mean – no, I guess, is</p> <p>5 the short answer.</p> <p>6 Q. And are you aware of any writings</p> <p>7 that reflect that the Hunton firm represented</p> <p>8 Highland in connection with the</p> <p>9 Loan Agreement?</p> <p>10 A. I'm not aware of those.</p> <p>11 Q. And what do you base your</p> <p>12 conclusion on that the Hunton firm</p> <p>13 represented Highland in connection with the</p> <p>14 Loan Agreement?</p> <p>15 A. Because Hunton is typically the</p> <p>16 Highland tax counsel that provides the</p> <p>17 organizational charts that are attached to</p> <p>18 the Loan Agreement.</p> <p>19 Q. And do you have independent – do</p> <p>20 you have knowledge – did the organizational</p> <p>21 charts that comprise Schedule 3.15 of the</p> <p>22 Loan Agreement, did they come from Hunton?</p> <p>23 MR. MARTIN: Objection, form.</p> <p>24 A. They came from Highland. So beyond</p> <p>25 that, I'm not sure.</p>
<p style="text-align: right;">Page 64</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Okay. So are you aware of any</p> <p>4 communications that Wick Phillips had with</p> <p>5 Hunton directly in connection with the</p> <p>6 Loan Agreement?</p> <p>7 A. No, sir.</p> <p>8 Q. So you have no independent</p> <p>9 knowledge – you have no knowledge, do you,</p> <p>10 that Hunton represented Highland in</p> <p>11 connection with the Loan Agreement, do you?</p> <p>12 MR. MARTIN: Objection, form.</p> <p>13 A. I don't know. Section 3.15 is part</p> <p>14 of the Loan Agreement. So that's where I'm</p> <p>15 getting a little hung up, I suppose.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Okay. And what part of Section –</p> <p>18 of Schedule 3.15 leads you to believe that</p> <p>19 Hunton represented Highland in connection</p> <p>20 with the Loan Agreement?</p> <p>21 MR. MARTIN: Objection, form.</p> <p>22 A. I guess it's just a little bit of</p> <p>23 deduction because Wick Phillips did not. So</p> <p>24 it's either Highland in-house or their</p> <p>25 typical tax counsel, which is Hunton, or DST</p>	<p style="text-align: right;">Page 65</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 counsel or REIT counsel.</p> <p>3 So I can't say for certain that</p> <p>4 it's Hunton, but I can say for certain that</p> <p>5 it's not Wick Phillips.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. So you can say – I'm sorry. You</p> <p>8 can say for certain that what is not</p> <p>9 Wick Phillips?</p> <p>10 A. That we did not – we had no role</p> <p>11 in these org charts, which you're saying did</p> <p>12 Hunton represent Highland in connection with</p> <p>13 the Loan Agreement.</p> <p>14 And I'm saying, it looks like it</p> <p>15 because these org charts were not prepared by</p> <p>16 Wick Phillips, so somebody represented</p> <p>17 Highland in connection with the</p> <p>18 Loan Agreement, to answer that question.</p> <p>19 Q. But you're speculating that it was</p> <p>20 Hunton, correct?</p> <p>21 A. That – I just said I don't know</p> <p>22 for certain that it was Hunton.</p> <p>23 Q. You actually – as you sit here</p> <p>24 today, you have no idea whether it was Hunton</p> <p>25 or whether any firm was involved in preparing</p>

<p style="text-align: right;">Page 66</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 those charts, do you?                  3 A. That's correct.                  4 Q. Okay. Can you describe the                  5 conversations that Wick Phillips had with                  6 HCRC concerning the organization charts that                  7 are attached to – as Schedule 3.15 to the                  8 Loan Agreement?                  9 A. Generally, yes. To get an                  10 understanding of what the structure was for                  11 each of the properties so that we could                  12 accurately communicate that to the lender.                  13 Q. Okay. Can you give me any more                  14 detail as to what those communications were                  15 beyond what you just testified to?                  16 A. You know, it would – sort of like                  17 we had just talked about, it would be whether                  18 it was going to be part of the restructure, a                  19 DST structure, you know, for purposes of                  20 communicating which buckets those would fall                  21 in, whether it's KeyBank or Freddie.                  22 Q. Are you aware that the                  23 Loan Agreement contained representations and                  24 warranties?                  25 A. Yes, sir.</p>	<p style="text-align: right;">Page 67</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 Q. And are you aware that those                  3 representations and warranties on multiple                  4 occasions included reps and warranties by the                  5 borrowers relating to the subsidiaries?                  6 A. Yes, sir.                  7 Q. Did Wick Phillips perform any                  8 diligence on behalf of any of its clients in                  9 connection with the Loan Agreement to                  10 determine if the representations and                  11 warranties in the Loan Agreement that related                  12 to the subsidiaries were true and accurate?                  13 A. Diligence as far as asking the                  14 client if their org chart is accurate? Yes.                  15 Q. And what did it do to diligence the                  16 reps and warranties and, in particular, the                  17 reps and warranties relating to the                  18 subsidiaries as they're reflected on                  19 Schedule 3.15?                  20 A. Confirm with the people that                  21 prepared the org charts.                  22 Q. So what were those communications?                  23 What was the substance of those                  24 communications?                  25 A. I don't know.</p>
<p style="text-align: right;">Page 68</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 Q. Okay. Do you know who                  3 Wick Phillips had these discussions relating                  4 to diligencing the reps and warranties                  5 relating to the subsidiaries?                  6 A. Yes. At the time it would have                  7 been primarily D.C. Sauter. And then –                  8 Q. Could you spell that?                  9 A. Sure. It's just the initials D,                  10 like dog, C, like Charles.                  11 Q. Yep.                  12 A. Sauter, S-a-u-t-e-r.                  13 Q. And who was D.C. Sauter a                  14 representative of, what entity?                  15 A. He was a partner at Wick Phillips.                  16 Q. Oh, okay. So he was the                  17 Wick Phillips lawyer that would have                  18 diligenced – done the underlying work to                  19 diligence the reps and warranties relating to                  20 the subsidiaries, correct?                  21 A. Yes, sir.                  22 Q. Did you speak to him in connection                  23 with your preparation for your testimony as                  24 the designated witness of Wick Phillips?                  25 A. Yes, sir. We spoke yesterday.</p>	<p style="text-align: right;">Page 69</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 Q. Okay. And so on behalf of                  3 Wick Phillips, who did Wick Phillips speak to                  4 in connection with diligencing the reps and                  5 warranties in the Loan Agreement relating to                  6 the subsidiaries?                  7 MR. MARTIN: Objection, form.                  8 A. It would have been the laundry list                  9 of folks we've been over, whether it was                  10 Paul Broadus, Freddy Chang, Matt McGraner,                  11 someone within the NexPoint or Highland team                  12 that had created those charts and could tell                  13 us that they were accurate.                  14 BY MR. BROWN:                  15 Q. Okay. It's your understanding that                  16 Wick Phillips made a determination that the                  17 charts that comprise Schedule 3.15 and the                  18 reps and warranties in the Loan Agreement                  19 relating to those charts were true and                  20 accurate, correct?                  21 A. Yes, sir.                  22 Q. And do you know if Wick Phillips                  23 had an understanding when it did this due                  24 diligence and spoke to that group of people                  25 you had identified earlier, Goetz, McGraner,</p>

<p style="text-align: right;">Page 70</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 Chang, and Broadus, I believe were the 3 universe; is that correct? 4 MR. MARTIN: Objection, form. 5 A. Yes, sir. 6 BY MR. BROWN: 7 Q. Okay. So of those four people, 8 did – how did Wick Phillips determine what 9 hat those individuals were wearing when it 10 spoke to them, i.e., were they speaking on 11 behalf of HCRE or were they speaking on 12 behalf of Highland or were they speaking on 13 behalf of some other borrower? 14 MR. MARTIN: Objection, form. 15 BY MR. BROWN: 16 Q. Do you understand the question, 17 Mr. Wills? 18 A. Yes. I can answer the question. 19 The Matt McGraner, Matt Goetz part 20 of things is NexPoint. So they should 21 communicate to us from the borrower level – 22 I'm sorry, the SE Multifamily Holdings LLC 23 level down, as we got down to the property 24 level. 25 And then Paul Broadus, on that</p>	<p style="text-align: right;">Page 71</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 side of things on the Highland level, is what 3 handles the chain up, or the chart up. And 4 so we would rely on their understanding of 5 the chart and the accuracy of that chart. 6 Q. Okay. You said McGraner was 7 speaking on behalf of NexPoint; is that 8 correct? 9 A. Yes, sir. 10 Q. And who else did you say was 11 speaking on behalf of NexPoint? 12 A. Matt Goetz. 13 Q. Okay. Do you know whether McGraner 14 was also a representative of Highland or had 15 any affiliation with Highland? 16 A. I don't. 17 Q. What about Goetz? Do you know if 18 he had any affiliation with Highland? 19 A. I don't know. 20 Q. And Wick Phillips understood, did 21 it not, that the lender under the 22 Loan Agreement would be relying on the reps 23 and warranties made by the borrower, correct? 24 A. Yes, sir. 25 Q. And Wick Phillips understood that</p>
<p style="text-align: right;">Page 72</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 an incorrect or false representation or 3 warranty was an event of default under the 4 Loan Agreement, correct? 5 A. Yes, sir. 6 Q. And the event of default could lead 7 to acceleration of the amounts due, correct? 8 A. Yes, sir. 9 MR. BROWN: Can we attach – or can 10 we mark Exhibit D. 11 (Email chain, "RE: Project Unicorn 12 - Final Org Charts," with 13 attachments, marked as Exhibit D.) 14 MR. BROWN: Okay. So can we scroll 15 down to the first email in the chain? 16 Okay. That's the one I want to focus on 17 for right now. 18 BY MR. BROWN: 19 Q. Okay. So Mr. Wills, focusing on 20 the email that's on the screen, it's the 21 Monday, September 17, 2018, email that is 22 sent by Rachel Sam at 4:21 p.m. 23 A. Uh-huh. 24 MR. MARTIN: You need to say "yes" 25 or "no."</p>	<p style="text-align: right;">Page 73</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 THE WITNESS: Yes. 3 BY MR. BROWN: 4 Q. Okay. Have you seen that email 5 before? 6 A. Yes. 7 Q. Who is Rachel Sam? 8 A. She is an attorney at 9 Wick Phillips. 10 Q. Okay. This email was sent by 11 Rachel Sam? 12 A. Yes, sir. 13 Q. And you have seen it before? 14 A. Yes, sir. 15 Q. Before or after your designation? 16 A. After. 17 Q. Okay. And did you review this 18 email as part of your preparation to testify 19 today? 20 A. Yes, sir. 21 Q. So this email, the caption is 22 "Final Org Charts." 23 And if we scroll down further to 24 the attachments, they are either – and I 25 can't tell, but they are either – this is</p>

<p style="text-align: right;">Page 74</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 this first email, says – I'm sorry, the  3 first attachment refers to Governors Green.  4 And this is either one of the  5 charts attached to Schedule 3.15 in the  6 Loan Agreement or some prior and very similar  7 version to it.  8 Would you say that's accurate?  9 MR. MARTIN: Objection, form.  10 A. Yes, sir.  11 BY MR. BROWN:  12 Q. And, again, on the org chart, as  13 with all of the org charts attached as  14 Schedule 3.15 that contain a reference to the  15 LLC, this org chart provides that the  16 ownership interests are 51 percent HCRE and  17 49 percent Highland, correct?  18 A. Yes, sir.  19 Q. And if we could scroll down to the  20 next org chart.  21 Again, this one is Stoney Ridge.  22 And would you agree that this is  23 either the same chart that's attached to –  24 as Schedule 3.15 or a virtually identical  25 version and certainly identical with respect</p>	<p style="text-align: right;">Page 75</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 to the ownership interests in the LLC?  3 A. Yes, sir.  4 Q. Scroll down one more chart, please.  5 With respect to the attachment to  6 Rachel Sam's email regarding Oak Mill  7 Apartments, again, would you agree that this  8 is either identical to the schedule attached  9 as – to the chart attached for – to  10 Schedule 3.15 or a virtually identical  11 version, and certainly identical with respect  12 to the reflection of the ownership interests  13 in the LLC?  14 A. Yes, sir.  15 MR. BROWN: Okay. Scroll down  16 again. I think that's the end. Yeah.  17 Okay.  18 Let's go back to the email, the  19 September 17 email.  20 BY MR. BROWN:  21 Q. Okay. So in her email, Ms. Sam is  22 writing or emailing to, if you look up to the  23 "To" line, Matt McGraner, who you've  24 referenced before. There are two – there's  25 an entry for him showing a Highland Capital</p>
<p style="text-align: right;">Page 76</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 email address, correct?  3 A. Yes, sir.  4 Q. And you had previously testified  5 that you believed he was a representative of  6 NexPoint, correct?  7 A. Yes, sir.  8 Q. Does this refresh your recollection  9 or change your conclusions as to whether or  10 not he was also a representative of Highland?  11 MR. MARTIN: Objection, form.  12 A. No, sir.  13 BY MR. BROWN:  14 Q. Okay. Do you have any idea why  15 Mr. McGraner has a Highland Capital email  16 address?  17 A. No, sir.  18 Q. And, again, it's also to Mr. Geotz,  19 who you also, I believe, testified that  20 Wick Phillips was communicating with on  21 behalf of NexPoint.  22 He also has a Highland Capital  23 email address, correct?  24 A. Yes, sir.  25 Q. And does that change your</p>	<p style="text-align: right;">Page 77</p> <p>1 Wick Phillips 30(b)(6) - R. Wills  2 conclusion or refresh your recollection as to  3 whether or not Mr. Goetz was also a  4 representative of Highland Capital or  5 Highland?  6 A. No, sir. No, sir.  7 Q. I want to make sure the record is  8 correct. I meant to just say Highland  9 because we've defined the Debtor as Highland.  10 Does this refresh your recollection  11 or change your conclusion as to whether  12 Mr. Goetz was a representative of Highland?  13 A. No, sir.  14 Q. Okay. And do you know who  15 Bonner McDermott is?  16 A. Yes, sir. I believe he is an  17 analyst with Mr. Goetz and Mr. McGraner.  18 Q. And do you know whether or not he  19 is a representative of Highland or some other  20 entity?  21 A. I do not know.  22 Q. You also had referred to  23 Mr. Broaddus, who is another recipient of  24 this email, also with a Highland Capital  25 email address?</p>

<p style="text-align: right;">Page 78</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Yes, sir.</p> <p>3 Q. Do you know whether Mr. Broadus is</p> <p>4 a representative of Highland?</p> <p>5 A. I believe that's correct.</p> <p>6 Q. Okay. And also Freddy Chang, who I</p> <p>7 believe you also referenced, with a</p> <p>8 Highland Capital email address.</p> <p>9 Do you know who Freddy Chang is a</p> <p>10 representative of?</p> <p>11 A. I believe he's NexPoint, some sort</p> <p>12 of in-house counsel role.</p> <p>13 Q. Okay. And do you know why he has a</p> <p>14 Highland Capital email address?</p> <p>15 A. No, sir.</p> <p>16 Q. Okay. And the cc is to D.C. Sauter</p> <p>17 of Wick Phillips, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And other than D.C. Sauter, there</p> <p>20 are no other outside lawyers that are on –</p> <p>21 that are recipients of this email, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. So this email by Rachel Sam, the</p> <p>24 Wick Phillips lawyer says:</p> <p>25 "I made a couple of clean up</p>	<p style="text-align: right;">Page 79</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 changes to the DST org charts and am</p> <p>3 waiting for signoff from</p> <p>4 Baker McKenzie. Once I hear back from</p> <p>5 Baker, I will circulate those updated</p> <p>6 org charts."</p> <p>7 So you, I believe, testified</p> <p>8 earlier that Wick Phillips didn't make any</p> <p>9 changes to the org charts. Does this refresh</p> <p>10 your recollection as to whether or not</p> <p>11 Wick Phillips made changes to the org charts?</p> <p>12 A. Yeah. It looks like Rachel may</p> <p>13 have cleaned up some typos that she got from</p> <p>14 DST counsel.</p> <p>15 Q. Does this refer to typos?</p> <p>16 A. "Clean up" is what I would</p> <p>17 interpret as typo.</p> <p>18 Q. You're assuming that clean up means</p> <p>19 typo?</p> <p>20 A. Yes, sir.</p> <p>21 Q. But you don't know, do you?</p> <p>22 A. I do not.</p> <p>23 Q. So, for example, you don't know</p> <p>24 whether the changes related to substance, do</p> <p>25 you?</p>
<p style="text-align: right;">Page 80</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. MARTIN: Objection, form.</p> <p>3 A. Well, I do because we are not DST</p> <p>4 counsel. So we would not be making material</p> <p>5 changes to the DST org chart.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Whether DST – Delaware Statutory</p> <p>8 Trust is what DST means, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And the reason you say you know</p> <p>11 that the changes were, quote, "typos" is</p> <p>12 because – tell me again?</p> <p>13 A. Well, they're attached and we just</p> <p>14 went through and said they're substantially</p> <p>15 similar to what's in the Loan Agreement.</p> <p>16 And quite frankly, we don't have</p> <p>17 DST counsel here. We don't have that</p> <p>18 capability. So we wouldn't – we wouldn't be</p> <p>19 making those changes.</p> <p>20 Q. Okay. But again, you're</p> <p>21 speculating, correct? You don't know.</p> <p>22 MR. MARTIN: Objection, form.</p> <p>23 BY MR. BROWN:</p> <p>24 Q. You don't know what changes Rachel</p> <p>25 made, do you?</p>	<p style="text-align: right;">Page 81</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. No, sir.</p> <p>3 MR. BROWN: Okay. Can we scroll up</p> <p>4 to the next email.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. Again, this is a – appears to be</p> <p>7 the next email on the chain. It's just under</p> <p>8 an hour later, at 5:16 p.m., to the same</p> <p>9 group with a copy to D.C. Sauter, and it's</p> <p>10 Rachel again here saying:</p> <p>11 "Just wanted to follow up on the</p> <p>12 org charts. Let us know if you have</p> <p>13 any comments or if these are okay to</p> <p>14 submit to Freddie."</p> <p>15 Does that – have you seen that</p> <p>16 email before?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And is that an email that</p> <p>19 Rachel Sam of Wick Phillips sent to all the</p> <p>20 people reflected on the "To" and "cc" line?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. Let's scroll up to the next</p> <p>23 email. And this is – have you seen this</p> <p>24 email before?</p> <p>25 It's the September 18, 2018, email</p>

<p style="text-align: right;">Page 82</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 from Freddy Chang with a Highland Capital</p> <p>3 email address, to Rachel Sam, again,</p> <p>4 regarding the final org charts. And it's</p> <p>5 Freddy Chang asking, "Are the DST org charts</p> <p>6 ready to go?" Asking Rachel.</p> <p>7 Have you seen this before?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And is this an email that was</p> <p>10 received by Wick Phillips?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Next email.</p> <p>13 This appears to be Rachel Sam's</p> <p>14 response to Freddy Chang's prior email at</p> <p>15 7:45. It's like seven minutes later, at</p> <p>16 7:52, from Rachel Sam to Freddy Chang,</p> <p>17 copying D.C. Sauter.</p> <p>18 Have you seen this email before?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And was this email sent by</p> <p>21 Wick Phillips?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And in response to Mr. Chang's</p> <p>24 inquiry to Rachel Sam if the DST org charts</p> <p>25 were ready to go, Rachel says:</p>	<p style="text-align: right;">Page 83</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 "The only remaining question is</p> <p>3 whether we will be converting or</p> <p>4 merging the borrower-level DST owner</p> <p>5 entities. The org charts currently</p> <p>6 reflect that the owner entities 'may</p> <p>7 be converted."</p> <p>8 Is that a -- is that a substantive</p> <p>9 question regarding the structure of the</p> <p>10 subsidiaries, in your opinion?</p> <p>11 A. A substantive question from --</p> <p>12 Q. Yeah. I mean, you said all that</p> <p>13 was done was typos and passing on, you know,</p> <p>14 information that other people provided. You</p> <p>15 said that that was all Wick Phillips did.</p> <p>16 But here, this email seems to ask a</p> <p>17 substantive question regarding converting or</p> <p>18 merging borrower-level DST owner entities.</p> <p>19 MR. MARTIN: Objection, form.</p> <p>20 A. Yes, sir. Again, we're at this</p> <p>21 point a conduit between Baker McKenzie, DST</p> <p>22 counsel, REIT counsel, and -- Rachel is</p> <p>23 simply reiterating the outstanding item for</p> <p>24 Baker McKenzie to complete on the org chart</p> <p>25 so we can accurately deliver that to Freddie</p>
<p style="text-align: right;">Page 84</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Mac.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. Is Baker McKenzie on any of these</p> <p>5 emails?</p> <p>6 A. Yes, sir. The first one we looked</p> <p>7 at.</p> <p>8 Q. The initiating email by Rachel Sam</p> <p>9 of September 17, 2018?</p> <p>10 A. Yes, sir.</p> <p>11 MR. BROWN: Okay. Let's scroll --</p> <p>12 I must be missing something. Let's</p> <p>13 scroll to the bottom. There. That</p> <p>14 email.</p> <p>15 BY MR. BROWN:</p> <p>16 Q. Can you point to the Baker McKenzie</p> <p>17 recipient for me?</p> <p>18 A. No. I'm sorry. I may have been</p> <p>19 speaking past you. I'm referencing the</p> <p>20 substance of the email.</p> <p>21 Q. Oh, I see. Okay. "I'm waiting for</p> <p>22 signoff from Baker McKenzie."</p> <p>23 Okay. I got it.</p> <p>24 And who did Baker McKenzie</p> <p>25 represent?</p>	<p style="text-align: right;">Page 85</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I'm not certain. I just know</p> <p>3 they're DST counsel on the Highland side.</p> <p>4 Q. Delaware Statutory Trust counsel;</p> <p>5 it's your understanding that that's who they</p> <p>6 represented?</p> <p>7 A. Yes, sir.</p> <p>8 (Telephonic interruption.)</p> <p>9 Q. Okay. Let's go back to where we</p> <p>10 were, the September 18 email, "The only</p> <p>11 remaining question."</p> <p>12 Okay. Scroll up one email. Okay.</p> <p>13 And this is a September 18 email, again, one</p> <p>14 minute after Rachel's email at 7:52, from</p> <p>15 Freddie Chang to Rachel Sam copied to</p> <p>16 D.C. Sauter. And it's Rachel Sam saying:</p> <p>17 "Thanks. Are you working on the</p> <p>18 REIT share acquisition org charts?"</p> <p>19 And the only question I have for</p> <p>20 you on that, Mr. Wills, is did Wick Phillips</p> <p>21 receive that email?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. And scroll up to</p> <p>24 Rachel Sam's response.</p> <p>25 Rachel Sam responds four minutes</p>

<p style="text-align: right;">Page 86</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 later, at 7:57, to the inquiry by                  3 Freddie Chang:                  4 "Yes, the current versions of                  5 those" -- being the REIT share                  6 acquisition charts -- "are attached.                  7 Paul has previously reviewed and                  8 approved these, but let us know if you                  9 have any comments."                  10 So did Wick Phillips receive this                  11 email?                  12 A. Yes.                  13 Q. Do you know who Paul is?                  14 A. I believe Paul Broaddus.                  15 MR. BROWN: Okay. So it's now                  16 about an hour from the last time we took                  17 a break, and I would like to take a                  18 five-minute break, if that's okay with                  19 everybody.                  20 MR. MARTIN: It's your deposition.                  21 Sure.                  22 MR. BROWN: All right. Let's                  23 reconvene in about five minutes.                  24 MR. MARTIN: Okay. Thank you.                  25 (Recess taken.)</p>	<p style="text-align: right;">Page 87</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 MR. BROWN: So let's get Exhibit D                  3 back on the screen. And let's go to the                  4 bottom of the initiating email.                  5 BY MR. BROWN:                  6 Q. So, again, Mr. Wills, I just want                  7 to focus on these emails in particular, as                  8 opposed to more generally, which I have                  9 discussed in more general terms.                  10 But Rachel Sam is communicating                  11 here with the people on the "To" line:                  12 Matt McGraner with the Highland Capital email                  13 address, Matt Goetz with the Highland Capital                  14 email address, Bonner McDermott with the                  15 Highland Capital email address, Paul Broaddus                  16 with the Highland Capital email address, and                  17 Freddy Chang with the Highland Capital email                  18 address.                  19 Does Wick Phillips have knowledge                  20 of the capacity that it was communicating                  21 with these individuals in?                  22 In other words, who were these                  23 individuals representing -- who were these                  24 individuals representing in these                  25 communications, which entities?</p>
<p style="text-align: right;">Page 88</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 And I'm interested in Wick                  3 Phillips' knowledge and not your speculation.                  4 A. Sure. So from our knowledge,                  5 Matt McGraner, Geotz, Bonner McDermott, and                  6 Freddy Chang are NexPoint. Paul Broaddus is                  7 Highland. And there's a shared services                  8 agreement between the two companies, and so                  9 they're operating somewhat together.                  10 Q. In other words, Highland and                  11 NexPoint are operating together; is that what                  12 you mean?                  13 A. Yes, sir.                  14 Q. And are any of these individuals                  15 that Rachel Sam was communicating with in                  16 these emails, are they representatives of                  17 HCRE, the lead borrower?                  18 A. I don't know.                  19 Q. Would Wick Phillips have been                  20 communicating with the lead borrower in                  21 connection with its communications relating                  22 to the Loan Agreement?                  23 A. I would assume so.                  24 Q. Do you know who Mark Patrick was or                  25 is?</p>	<p style="text-align: right;">Page 89</p> <p>1 Wick Phillips 30(b)(6) - R. Wills                  2 A. I believe he's an attorney with                  3 Highland.                  4 Q. Do you know why he wasn't included                  5 on these emails?                  6 A. No, sir.                  7 Q. And this email string, which is                  8 Exhibit D, this relates to Wick Phillips'                  9 work on the Loan Agreement, correct?                  10 A. Yes, sir.                  11 Q. And did these emails reflect some                  12 of the work that Wick Phillips did in                  13 connection with the Loan Agreement?                  14 A. Yes, sir.                  15 Q. Other than what's reflected in                  16 these emails, do you know what other work                  17 Wick Phillips did relating to the org charts                  18 that constitute Schedule 3.15 of the                  19 Loan Agreement?                  20 MR. MARTIN: Objection, form.                  21 A. Yes. I mean, just as part of the                  22 legal diligence in connection with, you know,                  23 a loan checklist, making sure that the org                  24 charts that we receive and are delivering                  25 back to the lender are approved by the</p>

<p style="text-align: right;">Page 90</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 business parties, and then, therefore, we can</p> <p>3 get them to Freddie or KeyBank or whomever</p> <p>4 needs to have those and then have them</p> <p>5 checked off of the diligence portion of the</p> <p>6 checklist.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. In connection with the org charts</p> <p>9 that show up as Schedule 3.15 of the</p> <p>10 Loan Agreement, who was Wick Phillips taking</p> <p>11 instructions from on behalf of the borrowers?</p> <p>12 A. I think primarily the parties you</p> <p>13 see here, both from The NexPoint side and</p> <p>14 Mr. Broaddus.</p> <p>15 Q. On the Highland side?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Other than this email, are you</p> <p>18 aware of other – I'm sorry. Other than this</p> <p>19 email string, are you aware of other</p> <p>20 communications between Wick Phillips and any</p> <p>21 of the borrowers concerning the org charts?</p> <p>22 A. No, sir.</p> <p>23 MR. BROWN: Can we put Exhibit E up</p> <p>24 on the screen, please.</p> <p>25 (Email chain, "RE: Unicorn - DSTs",</p>	<p style="text-align: right;">Page 91</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 marked as Exhibit E.)</p> <p>3 BY MR. BROWN:</p> <p>4 Q. Okay. Exhibit E appears to be an</p> <p>5 August 18, 2018 [sic] email from</p> <p>6 Paul Broaddus; is that correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And have you seen this email</p> <p>9 before?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Before or after your designation?</p> <p>12 A. After.</p> <p>13 Q. Did you review it in connection</p> <p>14 with your preparation for your testimony</p> <p>15 today?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And it appears that there are a</p> <p>18 number of recipients to this. One of them is</p> <p>19 D.C. Sauter; is that right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. So Wick Phillips did receive this</p> <p>22 email from Paul Broaddus, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And Paul Broaddus is – as you have</p> <p>25 previously testified, was a representative of</p>
<p style="text-align: right;">Page 92</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Highland in connection with Wick Phillips'</p> <p>3 role representing the borrowers in the</p> <p>4 Loan Agreement, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And the initiating email of</p> <p>7 July 27, the first email in the string, which</p> <p>8 is the second email on Exhibit E,</p> <p>9 indicates – it says:</p> <p>10 "Hi. Please see attached as</p> <p>11 discussed for the basic DST charts.</p> <p>12 Please note the open items.</p> <p>13 "Should we have a call next week?</p> <p>14 "Want to specifically discuss the</p> <p>15 items that will need to be closed</p> <p>16 out sooner rather than later.</p> <p>17 "Thanks. Paul."</p> <p>18 So, again, did Wick Phillips</p> <p>19 receive this email?</p> <p>20 A. Yes, sir. It looks that way.</p> <p>21 Q. As well as the attachments,</p> <p>22 correct?</p> <p>23 And maybe we should look at the</p> <p>24 attachments too. So if we could scroll</p> <p>25 further.</p>	<p style="text-align: right;">Page 93</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Okay. So let's – the first page</p> <p>3 of the attachment says "Open items:</p> <p>4 Economics/ownership of JV LLC."</p> <p>5 Do you know what that refers to?</p> <p>6 A. Not specifically, no.</p> <p>7 Q. Okay. Could we scroll to the next</p> <p>8 page of the attachment to Paul Broaddus'</p> <p>9 email. No. We can –</p> <p>10 Have you seen the attachments</p> <p>11 before, Mr. Wills?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Let's scroll to the next</p> <p>14 page.</p> <p>15 Okay. This attachment reverts to</p> <p>16 the ownership interests of a JV – of the JV</p> <p>17 LLC, which was referred to in the first</p> <p>18 document as being – to be determined, but</p> <p>19 approximately 51 percent for Partner 1 and</p> <p>20 49 percent for Partner 2.</p> <p>21 Do you know whether this is</p> <p>22 referring to the LLC, which is the subject of</p> <p>23 the, I think, Exhibit D in our case here?</p> <p>24 It's the SE Multifamily LLC Agreement.</p> <p>25 Is that what this refers to?</p>



<p>Page 94</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. That's what it looks like. Yes,</p> <p>3 sir.</p> <p>4 Q. Yeah. And just to go back and</p> <p>5 trace the history, the SE Multifamily</p> <p>6 Holdings LLC Agreement was dated August 23.</p> <p>7 The email that this was attached to is dated</p> <p>8 August 1. So this would have been – this</p> <p>9 email would have been sent prior to the</p> <p>10 original LLC Agreement.</p> <p>11 And this would have been the</p> <p>12 discussions about the formation of it,</p> <p>13 correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Can we scroll to the next</p> <p>16 page.</p> <p>17 And, again, this chart called DST</p> <p>18 Properties LLC reflects ownership interest of</p> <p>19 Partner 1 at 51 percent and Partner 2 at</p> <p>20 49 percent for the LLC to be formed, correct,</p> <p>21 which subsequently we learned was the SE</p> <p>22 Multifamily Holdings LLC Agreement, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Can we scroll forward again?</p> <p>25 Again, this is another chart that</p>	<p>Page 95</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 refers to the ownership interests of the</p> <p>3 to-be-formed LLC Agreement, ultimately which</p> <p>4 became SE Multifamily Holdings LLC, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And it reflects the same ownership</p> <p>7 interests as we saw in Schedule 3.15 to the</p> <p>8 Loan Agreement and in the LLC Agreement,</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Next chart.</p> <p>12 That's not sufficiently legible to</p> <p>13 me. Let's see. Yeah. I think we can pass</p> <p>14 on this.</p> <p>15 Do you have any idea what these</p> <p>16 represent?</p> <p>17 MR. MARTIN: Objection, form.</p> <p>18 A. It's tough to make it out, but – I</p> <p>19 don't know if this is the structure that</p> <p>20 Starwood had, who was the owner of the</p> <p>21 portfolio, and they're just reflecting that,</p> <p>22 or if this is a proposed structure for the</p> <p>23 acquisition itself.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. And this is Highland263748,</p>
<p>Page 96</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Of Exhibit E.</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Next chart, please.</p> <p>7 And, again, this would be</p> <p>8 Highland263749.</p> <p>9 Do you know what this is?</p> <p>10 A. Similarly, it's tough to tell, but</p> <p>11 more of the same if that was the existing</p> <p>12 structure of the asset at the time of the</p> <p>13 acquisition.</p> <p>14 Q. Next chart, please. This is</p> <p>15 263750.</p> <p>16 Again, do you know what this is?</p> <p>17 A. Same thing, existing structure.</p> <p>18 Q. Next chart. Same answer for</p> <p>19 263751?</p> <p>20 A. Yes, sir. It just looks like the</p> <p>21 underlying property or asset changes. But,</p> <p>22 yes, sir.</p> <p>23 Q. Okay. Next chart.</p> <p>24 Go to the next chart after this.</p> <p>25 And the next chart. Next chart. Keep going.</p>	<p>Page 97</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Keep going. Keep going.</p> <p>3 Okay. One more – okay. One more.</p> <p>4 This is a different format. Do you</p> <p>5 know how this is different from the</p> <p>6 other charts?</p> <p>7 A. I don't know why. It just looks</p> <p>8 like a different structure.</p> <p>9 Q. Okay. Let's go back to the</p> <p>10 original email.</p> <p>11 Hold on a second. It says</p> <p>12 K&amp;E Draft on all of these charts.</p> <p>13 What does that mean?</p> <p>14 A. I believe Kirkland &amp; Ellis.</p> <p>15 Q. Okay. And were these generated by,</p> <p>16 do you know, the seller – the potential</p> <p>17 seller of the assets to the limited – to the</p> <p>18 LLC?</p> <p>19 A. Yes, sir. I believe this was the</p> <p>20 existing structure in place.</p> <p>21 Q. I see.</p> <p>22 A. At the time.</p> <p>23 Q. Okay. Let's go back to the</p> <p>24 original email.</p> <p>25 Okay. On both these emails from</p>

<p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Paul Broaddus, the July 27 email and the</p> <p>3 August 1 email that constitute Exhibit E,</p> <p>4 they were sent and received by D.C. Sauter of</p> <p>5 Wick Phillips, correct? They were sent to</p> <p>6 and received by D.C. Sauter?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And do you know if Wick Phillips</p> <p>9 ever responded to these emails in any way?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Okay. Did Wick Phillips have any</p> <p>12 communications with Paul Broaddus relating to</p> <p>13 the charts attached on these emails?</p> <p>14 A. Not other than what we previously</p> <p>15 discussed.</p> <p>16 Q. Okay. Let's move on to Exhibit F.</p> <p>17 (SE Multifamily Holdings LLC First</p> <p>18 Amended and Restated Limited</p> <p>19 Liability Company Agreement, marked</p> <p>20 as Exhibit F.)</p> <p>21 BY MR. BROWN:</p> <p>22 Q. So Exhibit F is the SE Multifamily</p> <p>23 Holdings LLC First Amended and Restated</p> <p>24 Limited Liability Company Agreement, dated as</p> <p>25 of March 15, 2019, to be effective August 23,</p>	<p>Page 98</p>	<p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 2018, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And is this a true copy of that,</p> <p>5 this Agreement?</p> <p>6 A. It looks to be so, yes, sir.</p> <p>7 MR. BROWN: Let me just digress for</p> <p>8 a moment.</p> <p>9 Lauren, we had agreed by emails</p> <p>10 that the documents attached to both</p> <p>11 declarations, the Morris declaration and</p> <p>12 the McGraner declaration, that we could</p> <p>13 stipulate to their authenticity.</p> <p>14 MS. DRAWHORN: Yes.</p> <p>15 MR. BROWN: So with respect to</p> <p>16 Exhibit B to this deposition, the</p> <p>17 original LLC Agreement, the</p> <p>18 Loan Agreement, I believe, which is</p> <p>19 Exhibit C, and this Loan Agreement,</p> <p>20 Exhibit F, the Amended and Restated</p> <p>21 Limited Liability Agreement, we're</p> <p>22 agreeing that they're authentic.</p> <p>23 We're reserving whatever other</p> <p>24 objections, but nobody -- we're agreeing</p> <p>25 as to authenticity. So I'm not going to</p>	<p>Page 99</p>
<p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 worry about dealing with that in this</p> <p>3 deposition.</p> <p>4 Is that agreed, they're authentic?</p> <p>5 MS. DRAWHORN: Yes. That's agreed.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Okay. So tell me what this</p> <p>8 document is, Mr. Wills.</p> <p>9 A. Sure. It's the Amended and</p> <p>10 Restated LLC Agreement for SE Multifamily</p> <p>11 Holdings. My understanding in talking to</p> <p>12 D.C. Sauter was that KeyBank retraded us at</p> <p>13 the last minute and pulled back some of the</p> <p>14 previously committed funds, and so we were</p> <p>15 short about 20 million, which is why we</p> <p>16 needed to bring in additional equity.</p> <p>17 There was a previous relationship</p> <p>18 with BH on some prior multifamily deals, and</p> <p>19 so BH came in as the bridge equity, for lack</p> <p>20 of a better term. So the contributions</p> <p>21 changed and it's memorialized here.</p> <p>22 Q. Do you know where they're</p> <p>23 memorialized in the Agreement? And I can</p> <p>24 tell you if we flip to Schedule A.</p> <p>25 A. Yes, sir. That's where I was going</p>	<p>Page 100</p>	<p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 as well.</p> <p>3 (Email chain, "FW: Draft LLC</p> <p>4 Agreement," marked as Exhibit H.)</p> <p>5 BY MR. BROWN:</p> <p>6 Q. Okay. So you had referred to BH in</p> <p>7 your testimony you just gave.</p> <p>8 And if you look at Schedule A to</p> <p>9 the Amended LLC Agreement, it provides the</p> <p>10 capital contributions and percentage</p> <p>11 interest, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And is this Schedule A, the chart</p> <p>14 on Schedule A reflecting current -- the</p> <p>15 percentage interest, is that what you were</p> <p>16 referring to in terms of changing the</p> <p>17 ownership interest?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And is that an accurate statement</p> <p>20 regarding the ownership interest of the</p> <p>21 parties?</p> <p>22 A. I believe it accurately shows the</p> <p>23 BH portion, and on the remainder, I'm not</p> <p>24 positive.</p> <p>25 Q. Okay. Let me -- let's back up a</p>	<p>Page 101</p>

<p>Page 102</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 little bit. 3 Did – what was Wick Phillips' role 4 in connection with the Amended and Restated 5 Limited Liability Company Agreement that's 6 Exhibit E? 7 Let's just – I'm going to try to 8 make it simple. 9 Like we referred to the original 10 Agreement in this deposition as the 11 LLC Agreement, can we refer to this as – if 12 I refer to this as the Amended LLC Agreement, 13 you'll understand I'm referring to Exhibit F, 14 correct? 15 A. Yes, sir. 16 Q. Okay. So what was Wick Phillips' 17 role in connection with the Amended 18 LLC Agreement? 19 A. We did not have one, other than 20 delivering, you know, and communicating with 21 KeyBank on the modified structure. 22 Q. Okay. So I don't believe I have 23 seen any – well, let me back up. 24 How were the communications with 25 KeyBank on the modified structure? What form</p>	<p>Page 103</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 did those communications take? 3 A. I would assume telephonic or email. 4 MR. BROWN: Hayley, are you on the 5 call? 6 MS. WINOGRAD: Yes. I'm here. 7 MR. BROWN: I have not seen and I 8 don't know if – I don't think we've 9 received any communications between 10 Wick Phillips and KeyBank relating to 11 the Amended LLC Agreement, have we? 12 MS. WINOGRAD: I haven't seen any, 13 no. 14 BY MR. BROWN: 15 Q. So I guess, Mr. Wills, it raises 16 the question, we've asked for documents – 17 and maybe, Lauren, this is better addressed 18 to you – 19 MR. MARTIN: Yeah. Mr. Brown, I'll 20 represent to you, we haven't found any 21 of those communications. I think 22 Mr. Wills is mistaken on that. 23 MR. BROWN: Okay. 24 MR. MARTIN: We're not withholding 25 anything, and if we were withholding</p>
<p>Page 104</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 something, we would have produced a 3 privilege log or some other grounds for 4 withholding. I'm never in the business 5 of withholding anything that you're 6 otherwise entitled to. 7 MR. BROWN: And I'm not accusing. 8 I was just confused because – 9 MR. MARTIN: I appreciate that. 10 MR. BROWN: – I'm familiar with 11 the documents that were produced and 12 I've looked at them fairly closely in 13 this deposition and I never saw any 14 communications between Wick Phillips and 15 KeyBank. 16 MR. MARTIN: Yeah. I think if you 17 ran the tape back, you would probably 18 see both Ms. Drawhorn and I raise our 19 eyebrows when Mr. Wills said that. I 20 think he was simply mistaken. 21 BY MR. BROWN: 22 Q. Mr. Wills, in light of that 23 discussion, let's talk about, again, what 24 your understanding is of Wick Phillips' role 25 in connection with the Amended LLC Agreement.</p>	<p>Page 105</p> <p>1 Wick Phillips 30(b)(6) - R. Wills 2 A. We did not have one. 3 Q. You don't – let me ask you this: 4 You indicated in your prior testimony that 5 you believed there were communications with 6 KeyBank regarding the Amended LLC Agreement. 7 Why did you think that? 8 A. Well, that has been the siloed role 9 that we've maintained throughout the 10 Project Unicom transaction as sort of the 11 conduit in between the lender and the various 12 borrowers. 13 Q. Okay. So I think your counsel has 14 represented that there were no emails between 15 Wick Phillips and KeyBank concerning the 16 Amended LLC Agreement. 17 Are you aware of whether there were 18 emails that took place in form – I'm sorry, 19 whether there were communications that took 20 place in a form other than an email 21 communication? 22 A. I'm not aware. 23 Q. So is it true that Wick Phillips 24 did not represent any party to the Amended 25 LLC Agreement?</p>

<p style="text-align: right;">Page 106</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. Correct. We did not prepare it or</p> <p>3 have anything to do with that agreement.</p> <p>4 Q. And is there any retention</p> <p>5 agreement with respect to the LLC Agreement?</p> <p>6 A. No, sir.</p> <p>7 Q. Do you know if Wick Phillips had</p> <p>8 any communications with James Dondero in</p> <p>9 connection with the Amended LLC Agreement?</p> <p>10 A. I do not.</p> <p>11 Q. So let's focus again – I think</p> <p>12 that before we established that</p> <p>13 Wick Phillips – your testimony that</p> <p>14 Wick-Phillips had no role in connection with</p> <p>15 the Amended LLC Agreement. We didn't</p> <p>16 complete the questions with respect to your</p> <p>17 knowledge of the percentage interest set</p> <p>18 forth in the Amended LLC Agreement.</p> <p>19 So what is your understanding</p> <p>20 concerning the accuracy of the percentage</p> <p>21 interest set forth in Schedule A to the</p> <p>22 Amended LLC Agreement?</p> <p>23 A. In speaking with D.C., I believe</p> <p>24 they modified this with the intent of</p> <p>25 updating it prior to any distribution. But</p>	<p style="text-align: right;">Page 107</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 other than that, I'm not aware of the</p> <p>3 accuracy one way or the other.</p> <p>4 Q. I'm not sure I understand what that</p> <p>5 means. Can you help me understand? When you</p> <p>6 say, "they modified this with the intent of</p> <p>7 updating it prior to the distribution."</p> <p>8 Can you unpack that for me?</p> <p>9 Because I don't understand what that means.</p> <p>10 Modified what?</p> <p>11 A. Well, they added in the BH portion</p> <p>12 and then, obviously, the HCRE contributions</p> <p>13 and percentages and the Highland</p> <p>14 contributions and percentages are different</p> <p>15 from the original LLC Agreement.</p> <p>16 Q. Okay. And they're – I mean, the</p> <p>17 math, I'm sure if you did it on a calculator,</p> <p>18 it would reflect that these percentages are</p> <p>19 modified from the original percentages, 49</p> <p>20 and 51, based on a proportional pro rata</p> <p>21 reduction for the 6 percent given to</p> <p>22 BH Management, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Does Wick Phillips have any</p> <p>25 knowledge concerning whether or not the</p>
<p style="text-align: right;">Page 108</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 percentages reflected in this Schedule A do</p> <p>3 not accurately reflect what the parties</p> <p>4 intended?</p> <p>5 MR. MARTIN: Objection, form.</p> <p>6 A. I don't know.</p> <p>7 MR. BROWN: Okay. I'd like to take</p> <p>8 a brief recess.</p> <p>9 And, Hayley, I'd like to talk on</p> <p>10 the phone with you, so can we have a</p> <p>11 separate phone call?</p> <p>12 MS. WINOGRAD: Sure.</p> <p>13 MR. BROWN: I'm going to put myself</p> <p>14 on mute and stop the video.</p> <p>15 And, Hayley, can you call me on my</p> <p>16 cell?</p> <p>17 MS. WINOGRAD: Yeah. I'll do that</p> <p>18 right now.</p> <p>19 (Recess taken.)</p> <p>20 BY MR. BROWN:</p> <p>21 Q. Do you know who represented HCRE</p> <p>22 and Highland in connection with the Amended</p> <p>23 LLC Agreement?</p> <p>24 A. I believe it was Hunton &amp; Williams.</p> <p>25 Q. And what do you base that</p>	<p style="text-align: right;">Page 109</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 understanding on?</p> <p>3 A. Review of some material in</p> <p>4 connection with the deposition.</p> <p>5 Q. What material?</p> <p>6 A. Some of these exhibits.</p> <p>7 (Technical interruption, 1:29 p.m.</p> <p>8 to 1:34 p.m.)</p> <p>9 BY MR. BROWN:</p> <p>10 Q. So Mr. Wills, we've covered</p> <p>11 Wick Phillips' involvement in the</p> <p>12 representation of the parties in connection</p> <p>13 with the Loan Agreement, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And Wick Phillips represented the</p> <p>16 borrowers in connection with the</p> <p>17 Loan Agreement, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And Wick Phillips communicated with</p> <p>20 both – with Highland, I think you've</p> <p>21 acknowledged through Paul Broaddus, with</p> <p>22 respect to the ownership interests in the LLC</p> <p>23 in connection with the Loan Agreement,</p> <p>24 correct?</p> <p>25 MR. MARTIN: Objection, form.</p>

<p style="text-align: right;">Page 110</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. I don't think that's accurate. We</p> <p>3 had -- we communicated with Mr. Broaddus as</p> <p>4 it related to finalizing and forwarding the</p> <p>5 org charts that are part of Schedule 3.15 to</p> <p>6 the Loan Agreement.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. And those org charts contain a</p> <p>9 reflection of the ownership interest as they</p> <p>10 appear on the LLC Agreement, correct?</p> <p>11 A. Yes, sir. That's what they said.</p> <p>12 Q. And those org charts that were</p> <p>13 transmitted by Wick Phillips to</p> <p>14 Paul Broaddus, among others, reflect an</p> <p>15 ownership interest of 51 percent in HCRE and</p> <p>16 49 percent in Highland, correct?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And the percentage interests that</p> <p>19 appear in Schedule A of the Amended</p> <p>20 LLC Agreement reflect those same ownership</p> <p>21 interests adjusted for the addition of</p> <p>22 BH Management as a 6 percent owner, correct?</p> <p>23 MR. MARTIN: Objection, form.</p> <p>24 I'm going to instruct the witness</p> <p>25 to not answer the question as being</p>	<p style="text-align: right;">Page 111</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 outside the scope of the 30(b)(6)</p> <p>3 notice.</p> <p>4 And the record should probably</p> <p>5 reflect, Mr. Brown, I think you would</p> <p>6 agree with me, the court reporter lost</p> <p>7 about five minutes' worth of testimony.</p> <p>8 So I appreciate the fact that</p> <p>9 you're trying to go back through it</p> <p>10 methodically. I certainly don't want to</p> <p>11 get in the way with that. But we got</p> <p>12 into a scrap while she was offline about</p> <p>13 this and about what the scope of the</p> <p>14 30(b)(6) deposition notice is.</p> <p>15 So we perhaps have to have that</p> <p>16 discussion over again.</p> <p>17 MR. BROWN: Okay. Well, if you're</p> <p>18 instructing him not to answer --</p> <p>19 BY MR. BROWN:</p> <p>20 Q. Are you going to follow your</p> <p>21 counsel's instruction, Mr. Wills?</p> <p>22 A. Yes, sir.</p> <p>23 MR. BROWN: Okay.</p> <p>24 All right. I don't have any</p> <p>25 further questions.</p>
<p style="text-align: right;">Page 112</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 MR. MARTIN: Okay. I've got a few</p> <p>3 questions.</p> <p>4 Are you passing the witness,</p> <p>5 Mr. Brown?</p> <p>6 MR. BROWN: I'll pass the witness</p> <p>7 and reserve my right to reexamine.</p> <p>8 MR. MARTIN: Okay. Well, I guess I</p> <p>9 should make it clear that we're going to</p> <p>10 ask you to petition the Court for a</p> <p>11 reexamination because we presented</p> <p>12 Mr. Wills here and are giving you ample</p> <p>13 opportunity to ask questions.</p> <p>14 MR. BROWN: Well, I may need to</p> <p>15 clarify questions that you ask.</p> <p>16 MR. MARTIN: After the read and</p> <p>17 sign, that would be standard procedure,</p> <p>18 and I would not disagree with that.</p> <p>19 MR. BROWN: Well, you're going to</p> <p>20 ask him some questions.</p> <p>21 MR. MARTIN: Oh, I'm sorry. Yeah,</p> <p>22 yeah. I'm sorry.</p> <p>23 After me? Sure.</p> <p>24 MR. BROWN: That's what I mean.</p> <p>25 MR. MARTIN: I apologize. I didn't</p>	<p style="text-align: right;">Page 113</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 understand what you were saying. I</p> <p>3 thought you were saying we'd get back</p> <p>4 together at some point in the future.</p> <p>5 MR. BROWN: No. I want the</p> <p>6 opportunity to, essentially, redirect</p> <p>7 after you --</p> <p>8 MR. MARTIN: Recross after my</p> <p>9 direct? Sure.</p> <p>10 Does anybody else have any</p> <p>11 questions before I go? Ms. Dandeneau?</p> <p>12 MS. DANDENEAU: No, I do not.</p> <p>13 MR. MARTIN: Okay. And I apologize</p> <p>14 if I tortured your name.</p> <p>15 MS. DANDENEAU: You actually said</p> <p>16 it perfectly -- well, pretty perfectly.</p> <p>17 --</p> <p>18 EXAMINATION</p> <p>19 BY MR. MARTIN:</p> <p>20 Q. Okay. Mr. Wills, most of my</p> <p>21 questions are going to be just follow-up to</p> <p>22 what Mr. Brown asked you.</p> <p>23 Who is it your understanding that</p> <p>24 Wick Phillips represented in connection with</p> <p>25 the Loan Agreement?</p>

<p style="text-align: right;">Page 114</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. The borrowers.</p> <p>3 Q. And of those, was there any</p> <p>4 representation – Mr. Brown asked you a lot</p> <p>5 of questions about Highland being the lead</p> <p>6 borrower.</p> <p>7 Do you remember that?</p> <p>8 MR. BROWN: That's an incorrect –</p> <p>9 by the way, you're mischaracterizing.</p> <p>10 It was HCRE, not Highland.</p> <p>11 MR. MARTIN: Okay. HCRE.</p> <p>12 BY MR. MARTIN:</p> <p>13 Q. Did HCRE have its own counsel</p> <p>14 in-house or outside counsel?</p> <p>15 A. No.</p> <p>16 Q. Now, at Wick Phillips, at the time</p> <p>17 of these transactions, who would have</p> <p>18 consulted with the client about possible</p> <p>19 conflicts or waiver of conflicts that</p> <p>20 Mr. Brown was asking you about?</p> <p>21 A. D.C. Sauter.</p> <p>22 Q. Okay. And at the time, Mr. Sauter</p> <p>23 was a partner at Wick Phillips, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Is Mr. Sauter still a partner at</p>	<p style="text-align: right;">Page 115</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Wick Phillips?</p> <p>3 A. No, sir.</p> <p>4 Q. And who would have consulted with</p> <p>5 the client regarding Mr. Brown's questions</p> <p>6 about the mechanics of the loan, who directed</p> <p>7 what, where the money was going, what the</p> <p>8 role of the lead borrower was compared to the</p> <p>9 other borrowers, etc.?</p> <p>10 A. D.C. Sauter.</p> <p>11 Q. Now, to your knowledge – and I'm</p> <p>12 just going to try to make all of this crystal</p> <p>13 clear. Because I think this is where the</p> <p>14 fight with Mr. Brown is going to come in.</p> <p>15 To your knowledge, did</p> <p>16 Wick Phillips have anything to do with the</p> <p>17 formation of the LLC Agreement or the</p> <p>18 negotiation of the LLC Agreement?</p> <p>19 A. No, sir.</p> <p>20 Q. Can you explain in</p> <p>21 non-real-estate-lawyer terms what the scope</p> <p>22 of the representation was of Wick Phillips in</p> <p>23 the matter at issue?</p> <p>24 A. Yes. Our – the scope of our</p> <p>25 representation was at specifically the real</p>
<p style="text-align: right;">Page 116</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 estate/property level, working with</p> <p>3 essentially going through the</p> <p>4 lender required –</p> <p>5 MR. BROWN: Can I just interpose</p> <p>6 an – ask for clarification?</p> <p>7 You asked for Wick Phillips' role</p> <p>8 in the matter at issue.</p> <p>9 Could you clarify, please, what the</p> <p>10 matter at issue is that you're referring</p> <p>11 to?</p> <p>12 BY MR. MARTIN:</p> <p>13 Q. Mr. Wills, who has Wick Phillips</p> <p>14 represented while you're here today?</p> <p>15 A. NexPoint.</p> <p>16 MR. BROWN: Again, I'm going to</p> <p>17 object. It's vague and ambiguous.</p> <p>18 Do you mean with respect to the</p> <p>19 claim –</p> <p>20 MR. MARTIN: Make an objection.</p> <p>21 MR. BROWN: Do you mean with</p> <p>22 respect to the Loan Agreement? Do you</p> <p>23 mean with respect to the LLC Agreement?</p> <p>24 There's several – Wick Phillips</p> <p>25 has more than one representation. I'm</p>	<p style="text-align: right;">Page 117</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 just trying to get the record clear on</p> <p>3 what you're asking him.</p> <p>4 MR. MARTIN: Are you finished?</p> <p>5 MR. BROWN: Yes.</p> <p>6 MR. MARTIN: I would ask you to</p> <p>7 keep your objections to the "objection,</p> <p>8 form" called for by the Federal Rules of</p> <p>9 Civil Procedure. If I ask you for the</p> <p>10 basis, then you can make a speaking</p> <p>11 objection.</p> <p>12 You are still trying to conflate</p> <p>13 all of these issues. I'm trying to</p> <p>14 separate them out to make them clear. I</p> <p>15 get to ask my questions, and if you want</p> <p>16 to come back and ask other questions,</p> <p>17 you can.</p> <p>18 MR. BROWN: Thank you for the</p> <p>19 lecture and for the instructions on how</p> <p>20 to practice law.</p> <p>21 MR. MARTIN: Well, you started it.</p> <p>22 BY MR. MARTIN:</p> <p>23 Q. Are you aware that NexPoint had a</p> <p>24 shared services agreement with one of the</p> <p>25 Highland entities, which is why their email</p>

<p style="text-align: right;">Page 118</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 addresses have Highland Capital in them?</p> <p>3 A. Yes.</p> <p>4 Q. Did Wick Phillips form the LLC that</p> <p>5 Mr. Brown asked you about today?</p> <p>6 A. No.</p> <p>7 Q. Did Wick Phillips draft or</p> <p>8 negotiate the Amended LLC Agreement that</p> <p>9 Mr. Brown asked you about today?</p> <p>10 A. No.</p> <p>11 Q. If, in fact, another law firm</p> <p>12 drafted the LLC Agreement, would that be</p> <p>13 consistent with your understanding of how the</p> <p>14 LLC was formed?</p> <p>15 A. Yes.</p> <p>16 Q. Regardless of who formed the LLC,</p> <p>17 as a real estate lawyer, since Wick Phillips</p> <p>18 was representing NexPoint and the borrowers,</p> <p>19 would Wick Phillips had to have known the</p> <p>20 ownership structure of the LLC in order to</p> <p>21 work on Project Unicorn?</p> <p>22 A. Yes.</p> <p>23 Q. Why?</p> <p>24 A. So that we could accurately</p> <p>25 communicate that to KeyBank, and because</p>	<p style="text-align: right;">Page 119</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 those same – the structure charts are</p> <p>3 attached as an exhibit to the Loan Agreement.</p> <p>4 Q. I'm going to direct your attention</p> <p>5 to the exhibits that Mr. Brown provided prior</p> <p>6 to this deposition and ask you to look at</p> <p>7 Exhibit H.</p> <p>8 And you were in the room when we</p> <p>9 became aware that the court reporter was</p> <p>10 offline for a little bit, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And if my memory of this is</p> <p>13 correct, I think she was offline when</p> <p>14 Mr. Brown asked you a couple of questions</p> <p>15 about Exhibit H.</p> <p>16 Do you remember that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Can you please look at Exhibit H</p> <p>19 and tell me, on the – that's an email string</p> <p>20 starting on July 27, 2018, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And who is the author of the first</p> <p>23 email in that chain?</p> <p>24 A. Alexander McGeoch.</p> <p>25 Q. And Mr. McGeoch's email signature</p>
<p style="text-align: right;">Page 120</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 indicates he's a partner at Hunton Andrews</p> <p>3 Kurth, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. In Dallas, Texas, right?</p> <p>6 A. Correct.</p> <p>7 Q. Who is the email addressed to?</p> <p>8 A. Mark Patrick.</p> <p>9 Q. And Mark Patrick you previously</p> <p>10 identified as being one of the in-house</p> <p>11 people at Highland, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And is there a Wick Phillips</p> <p>14 attorney on the email from Mr. McGeoch to</p> <p>15 Mr. Patrick?</p> <p>16 A. No, sir.</p> <p>17 Q. And then the top email on Exhibit H</p> <p>18 is from Mr. Patrick to Tim Courmoyer,</p> <p>19 correct?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And it's my understanding</p> <p>22 Tim Courmoyer is a Highland person as well,</p> <p>23 correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And he doesn't work at</p>	<p style="text-align: right;">Page 121</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Wick Phillips, does he?</p> <p>3 A. He does not.</p> <p>4 Q. And there's no Wick Phillips</p> <p>5 attorney on either of these emails, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Could you read Mr. McGeoch's email</p> <p>8 beginning with the word "Mark"?</p> <p>9 A. (Reading.)</p> <p>10 "Mark, a draft of the Unicorn LLC</p> <p>11 agreement is attached. We need to</p> <p>12 select another name because Unicorn</p> <p>13 is taken in Delaware. It would be</p> <p>14 helpful to schedule a call with you</p> <p>15 to walk through our thoughts on the</p> <p>16 allocation and distribution drafting</p> <p>17 approach we took. Please let me</p> <p>18 know if you have time for a call</p> <p>19 with Mark and me this morning.</p> <p>20 "Thanks, Alex."</p> <p>21 Q. So does that indicate to you that</p> <p>22 Hunton Andrews Kurth actually was involved in</p> <p>23 the allocation and distribution drafting of</p> <p>24 the LLC Agreement?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 122</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 Q. When Mr. Brown asked you questions</p> <p>3 about Mr. Wick Phillips' role in drafting the</p> <p>4 LLC Agreement, he didn't ask you about Hunton</p> <p>5 Andrews Kurth, did he?</p> <p>6 A. No, sir.</p> <p>7 (Email chain "RE: SE Multi-Family</p> <p>8 Holdings LLC: Amended and</p> <p>9 Restated," beginning Bates</p> <p>10 Highland136853, marked as Exhibit</p> <p>11 I.)</p> <p>12 BY MR. MARTIN:</p> <p>13 Q. If you would, please, look at</p> <p>14 Exhibit I.</p> <p>15 A. Okay.</p> <p>16 Q. This is an email chain, several</p> <p>17 pages long. And if we're going by the Bates</p> <p>18 numbers, from – starting on Highland136853</p> <p>19 through Highland136856.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Will you page through any of those</p> <p>23 emails and identify any email addresses from</p> <p>24 Wick Phillips that are included in that</p> <p>25 chain?</p>	<p style="text-align: right;">Page 123</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 A. There are no Wick Phillips' emails.</p> <p>3 MR. MARTIN: Okay. I'll pass the</p> <p>4 witness.</p> <p>5 MR. BROWN: Ms. Vosburgh, could you</p> <p>6 go back to the first question that</p> <p>7 Counsel asked on his set of questions of</p> <p>8 Mr. Wills, to the first question, and</p> <p>9 read it back to me.</p> <p>10 THE REPORTER: (Reading back.)</p> <p>11 "Question: Okay. Mr. Wills, most</p> <p>12 of my questions are going to be</p> <p>13 follow-up questions to what</p> <p>14 Mr. Brown asked you.</p> <p>15 "Who is it your understanding that</p> <p>16 Wick Phillips represented in</p> <p>17 connection with the Loan Agreement?"</p> <p>18 "Answer: The borrowers."</p> <p>19 MR. BROWN: Okay. There's a</p> <p>20 question regarding the matter at hand.</p> <p>21 That's the one I want read back.</p> <p>22 THE REPORTER: (Reading back.)</p> <p>23 "Question: Can you explain in</p> <p>24 non-real-estate-lawyer terms what</p> <p>25 the scope of the representation was</p>
<p style="text-align: right;">Page 124</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 of Wick Phillips in the matter at</p> <p>3 issue?"</p> <p>4 THE REPORTER: Is that the one?</p> <p>5 MR. BROWN: Yes.</p> <p>6 THE REPORTER: (Reading back.)</p> <p>7 "Answer: Yes. Our – the scope</p> <p>8 of our representation was at</p> <p>9 specifically the real</p> <p>10 estate/property level working with</p> <p>11 especially going through the lender</p> <p>12 required –"</p> <p>13 And then there was an interjection.</p> <p>14 —</p> <p>15 RE-EXAMINATION</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Okay. Mr. Wills, I want to</p> <p>18 understand what your understanding was when</p> <p>19 you were asked about the scope of the</p> <p>20 representation of the matter at issue.</p> <p>21 What matter at issue did you</p> <p>22 understand was being referred to?</p> <p>23 A. Wick Phillips' role with</p> <p>24 Project Unicorn.</p> <p>25 Q. Okay. So you were not answering</p>	<p style="text-align: right;">Page 125</p> <p>1 Wick Phillips 30(b)(6) - R. Wills</p> <p>2 the question in connection with</p> <p>3 Wick Phillips' role in connection with the</p> <p>4 Loan Agreement then, were you?</p> <p>5 A. Well, to me, Project Unicorn</p> <p>6 incorporates really all of the topics on the</p> <p>7 depo notice, the Loan Agreement,</p> <p>8 LLC Agreements. It's all sort of the same</p> <p>9 global project.</p> <p>10 Q. But you've already testified, have</p> <p>11 you not, and Wick Phillips has already</p> <p>12 acknowledged in its papers that it filed in</p> <p>13 the bankruptcy court that it represented the</p> <p>14 borrowers in connection with the</p> <p>15 Loan Agreement, correct?</p> <p>16 A. Correct.</p> <p>17 MR. BROWN: I don't have any other</p> <p>18 questions.</p> <p>19 MR. MARTIN: We'll reserve. Thank</p> <p>20 you.</p> <p>21 (The deposition was concluded at</p> <p>22 1:51 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>



Page 126		Page 127	
1	Wick Phillips 30(b)(6) - R. Wills	1	ERRATA SHEET
2	CERTIFICATE	2	Case Name:
3		3	Deposition Date:
4	I, ANNE E. VOSBURGH, Certified Shorthand	4	Deponent:
5	Reporter, Registered Professional Reporter,	5	Pg. No. Now Reads Should Read Reason
6	Certified Realtime Reporter, and Closed	6	_____
7	Captioner, hereby certify:	7	_____
8	That ROB WILLS, via remote	8	_____
9	videoconference, solemnly affirmed and agreed to	9	_____
10	testify to the truth, the whole truth and	10	_____
11	nothing but the truth; that all counsel	11	_____
12	stipulated to this process, notwithstanding the	12	_____
13	location of reporter or witness at time of	13	_____
14	deposition; and that this transcript is a true	14	_____
15	and correct record of testimony given.	15	_____
16	I further certify that I am not related	16	_____
17	to any of the parties to this action and that I	17	_____
18	am in no way interested in the outcome of this	18	_____
19	matter. Dated: August 11th, 2021.	19	_____
20		20	
21	_____	21	Signature of Deponent
22	ANNE E. VOSBURGH	22	SUBSCRIBED AND SWORN BEFORE ME
23	Certified Shorthand Reporter No. 6804	23	THIS ____ DAY OF _____, 2021.
24	Registered Professional Reporter	24	_____
25	Certified Realtime Reporter	25	(Notary Public) MY COMMISSION EXPIRES: _____

<p>(</p> <p>(a) 38:11</p> <p>(b) 25:23 38:11,21</p> <hr/> <p>1</p> <p>1 93:19 94:8,19 98:3</p> <p>1.05 37:23 38:7,11,16</p> <p>1.07 34:22 35:9</p> <p>1.07(a) 34:25</p> <p>11 6:3</p> <p>14 37:23</p> <p>15 98:25</p> <p>17 72:21 75:19 84:9</p> <p>18 18:25 19:2 81:25 85:10,13 91:5</p> <p>1:29 109:7</p> <p>1:34 109:8</p> <hr/> <p>2</p> <p>2 93:20 94:19</p> <p>20 100:15</p> <p>2018 14:15,21 20:23 21:9 72:21 81:25 84:9 91:5 99:2 119:20</p> <p>2019 98:25</p> <p>2021 6:3 30:2,13</p> <p>22 51:14</p> <p>23 14:15,21 94:6 98:25</p> <p>25 37:25</p> <p>26 20:23 21:8</p> <p>263750 96:15</p> <p>263751 96:19</p> <p>27 92:7 98:2 119:20</p>	<p>3</p> <p>3 23:16</p> <p>3.15 47:19 48:4,6,9 49:20 51:12 58:5,19 59:2,19 63:21 64:13, 18 66:7 67:19 69:17 74:5,14,24 75:10 89:18 90:9 95:7 110:5</p> <p>30(b)(6) 6:1 7:1 8:1 9:1,2,10 10:1 11:1,21 12:1,10 13:1 14:1 15:1,4 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1, 21 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1,2,14 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1</p> <hr/> <p>4</p> <p>4 12:17 29:19</p> <p>4.01(b) 25:20</p> <p>41 58:10</p> <p>49 19:9 47:18 50:12</p>	<p>51:9 53:11,18,24 54:6,11 55:13,21 58:11 74:17 93:20 94:20 107:19 110:16</p> <p>49/51 59:20</p> <p>4:21 72:22</p> <hr/> <p>5</p> <p>51 19:7 25:18 47:18 50:13 51:8 53:11,18, 24 54:6,12 55:13,22 58:11 74:16 93:19 94:19 107:20 110:15</p> <p>5:16 81:8</p> <hr/> <p>6</p> <p>6 107:21 110:22</p> <p>6th 29:25 30:13 31:13</p> <hr/> <p>7</p> <p>76 27:16</p> <p>7:45 82:15</p> <p>7:52 82:16 85:14</p> <p>7:57 86:2</p> <hr/> <p>9</p> <p>9.01 27:17</p> <p>9.01(a) 27:19 28:2,20</p> <p>9011 9:3</p> <p>9:30 6:3</p> <hr/> <p>A</p> <p>a.m. 6:3</p> <p>ability 39:13</p> <p>acceleration 72:7</p> <p>acceptable 16:7</p> <p>accuracy 27:9 50:4 71:5 106:20 107:3</p> <p>accurate 15:2 67:12,</p>	<p>14 69:13,20 74:8 101:19 110:2</p> <p>accurately 28:21 66:12 83:25 101:22 108:3 118:24</p> <p>accusing 104:7</p> <p>acknowledged 43:17,21 109:21</p> <p>acquired 51:4</p> <p>acquisition 22:18 85:18 86:6 95:23 96:13</p> <p>acquisitions 16:16 40:17 46:7,9</p> <p>actual 35:21 37:7</p> <p>added 25:16 28:10 31:7 40:12 107:11</p> <p>addition 110:21</p> <p>additional 22:24 25:17 100:16</p> <p>address 54:16 58:8 76:2,16,23 77:25 78:8,14 82:3 87:13, 14,15,16,18</p> <p>addressed 26:3 46:25 103:17 120:7</p> <p>addresses 118:2 122:23</p> <p>adjusted 110:21</p> <p>Administrative 25:25 26:4</p> <p>admission 13:15 30:24</p> <p>advance 13:14 38:23 39:10</p> <p>advanced 38:25 41:24</p> <p>advances 39:14,25 40:2,4 41:10,12</p> <p>advantages 36:18</p> <p>adverse 9:21</p> <p>advisability 34:16</p> <p>advise 41:17</p>	<p>affiliation 71:15,18</p> <p>agency 22:21</p> <p>agent 21:12 25:25 26:4</p> <p>agree 31:12 74:22 75:7 111:6</p> <p>agreed 99:9 100:4,5</p> <p>agreeing 99:22,24</p> <p>agreement 14:15,21 15:19,21 16:5,6,9,12, 13,18,20 17:10,11, 14,24 18:7,9,19,20, 22 19:2,13,19,24 20:6,12,22 21:8,10 22:2,5,8,11,15,19 23:4,9,16,18,25 24:5, 8,16,19 25:23 26:12, 22,24 27:11,17 28:5, 16,20,21 30:17 31:7, 10,23 32:2,4 33:8,17, 24 34:5,18 35:14,21, 24 36:21 37:6,13 38:14 39:12,22 40:20,23 41:8,11,19, 25 42:5 43:8,19 44:6 45:4,16 46:4,13,18 47:2,9,14,20 48:10 49:2 58:6,16,19 59:2 60:4 61:13,20,25 62:20 63:9,14,18,22 64:6,11,14,20 65:13, 18 66:8,23 67:9,11 69:5,18 71:22 72:4 74:6 80:15 88:8,22 89:9,13,19 90:10 92:4 93:24 94:6,10, 22 95:3,8 98:19,24 99:5,17,18,19,21 100:10,23 101:4,9 102:5,10,11,12,18 103:11 104:25 105:6, 16,25 106:3,5,9,15, 18,22 107:15 108:23 109:13,17,23 110:6, 10,20 113:25 115:17, 18 116:22,23 117:24 118:8,12 119:3 121:11,24 122:4 123:17</p> <p>agreements 18:13 32:10,16,24 43:14</p>
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## EXHIBIT B

**PACHULSKI STANG ZIEHL & JONES LLP**

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Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)

Kenneth H. Brown (CA Bar No. 100396)

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*Counsel for Highland Capital Management, L.P.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**DEBTOR'S AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION TO  
WICK PHILLIPS GOULD & MARTIN, LLP**

**PLEASE TAKE NOTICE** that pursuant to Federal Rules of Bankruptcy Procedure 7030, incorporating by reference Federal Rule of Civil Procedure 30(b)(6), Highland Capital

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (“Bankruptcy Case”), shall take the deposition upon oral examination of Wick Phillips Gould & Martin, LLP (“WPGM”) in connection with the *Debtor’s Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and For Related Relief* [Docket No. 2196] (the “Motion to Disqualify”) through one or more officers, directors, partners, agents or other representatives, who shall be designated to testify on WPGM’s behalf regarding all information known or reasonably available to WPGM with respect to the subject matters identified in **Exhibit A** attached hereto on **August 11, 2021** commencing at **9:30 a.m. Central Time**, or at such other day and time as the Debtor determines upon reasonable notice.

The Debtor requests that WPGM provide written notice at least five (5) business days before the deposition of the name(s) and employment position(s) of the individual(s) designated to testify on WPGM’s behalf.

**The deposition will be taken remotely** via an online platform due to the coronavirus pandemic such that no one will need to be in the same location as anyone else in order to participate in the deposition and by use of Interactive Realtime. Parties who wish to participate in the deposition should contact **Kenneth Brown**, Pachulski Stang Ziehl & Jones LLP, at kbrown@pszjlaw.com **no fewer than 48 hours before the start of the deposition** for more information regarding participating in this deposition remotely.

Dated: July 26, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

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Ira D. Kharasch (CA Bar No. 109084)

Kenneth H. Brown (CA Bar No. 100396)

John A. Morris (NY Bar No. 266326)

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*Counsel for Highland Capital Management, L.P.*



## **EXHIBIT A**

### **DEFINITIONS**

1. “Allocation” shall have the meaning ascribed to it in the Brief.
2. “Brief” refers to the *Debtor’s Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and For Related Relief* [Docket No. 2197].
3. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.
4. “LLC Agreement” shall have the meaning ascribed to it in the Brief.
5. “Loan Agreement” shall have the meaning ascribed to it in the Brief.
6. “Restated LLC Agreement” shall have the meaning ascribed to it in the Brief.
7. “Revised Allocation” shall have the meaning ascribed to it in the Brief.

### **TOPICS**

#### **Topic No. 1:**

WPGM’s role Concerning the LLC Agreement.

#### **Topic No. 2:**

WPGM’s role Concerning the Allocation.

#### **Topic No. 3:**

WPGM’s role Concerning the Loan Agreement.

#### **Topic No. 4:**

WPGM’s role Concerning the Restated LLC Agreement.

**Topic No. 5:**

WPGM's role Concerning the Revised Allocation.

**Topic No. 6:**

WPGM's representation of parties in connection with the Loan Agreement.

**Topic No. 7:**

WPGM's representation of parties in connection with the LLC Agreement.

**Topic No. 7:**

WPGM's representation of parties in connection with the Restated LLC Agreement.

## EXHIBIT C

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: )  
)  
HIGHLAND CAPITAL MANAGEMENT, ) Chapter 11  
L.P. )  
)  
Debtor. ) Case No.: 19-34054-sgj11  
)

\*\*\*\*\*  
ORAL ZOOM DEPOSITION OF  
ROBERT L. KEHR  
SEPTEMBER 16, 2021  
Volume 1 of 1  
\*\*\*\*\*

ORAL ZOOM DEPOSITION OF ROBERT L. KEHR,  
produced as a witness at the instance of the Debtor and  
duly sworn, was taken in the above-styled and numbered  
cause on the 16th day of September, 2021, from 10:30  
a.m. to 2:01 p.m. , before ASHLEY ELIZONDO, CSR No. 9465  
in and for the State of Texas, reported by machine  
shorthand, in Los Angeles County, California, pursuant  
to the Texas Rules of Civil Procedure and the provisions  
stated on the record or attached hereto.

Job No. 4800824

<div>1 APPEARANCES:</div> <div>2</div> <div>3 FOR NEXPOINT REAL ESTATE PARTNERS:</div> <div>4 Brant C. Martin, Esq.</div> <div>5 Lauren K. Drawhorn, Esq.</div> <div>6 WICK PHILLIPS</div> <div>7 100 Throckmorton Street</div> <div>8 Suite 1500</div> <div>9 Fort Worth, Texas 76102</div> <div>10 Telephone: 817-332-7788</div> <div>11 E-mail: brant.martin@wickphillips.com</div> <div>12 lauren.drawhorn@wickphillips.com</div> <div>13 FOR HIGHLAND CAPITAL MANAGEMENT:</div> <div>14 Kenneth Brown, Esq.</div> <div>15 La Asia Canty, Esq.</div> <div>16 PACHULSKI STANG ZIEHL AND JONES</div> <div>17 10100 Santa Monica Boulevard</div> <div>18 Floor 13</div> <div>19 Los Angeles, California 90067</div> <div>20 Telephone: 310-201-0760</div> <div>21 E-mail: kbrown@pszjlaw.com</div> <div>22 lsc@pszjlaw.com</div> <div>23 FOR UBS SECURITIES AND UBS AG LONDON BRANCH:</div> <div>24 Shannon McLaughlin, Esq.</div> <div>25 LATHAM AND WATKINS</div> <div>885 3rd Avenue</div> <div>Suite 1000</div> <div>New York, New York 10022</div> <div>Telephone: 212-906-4612</div> <div>E-mail: shannon.mclaughlin@lw.com</div> <div>Page 2</div>	<div>1 REQUESTED DOCUMENTS/INFORMATION</div> <div>2 NO. DESCRIPTION PAGE</div> <div>3 NONE</div> <div>4</div> <div>5 CERTIFIED QUESTIONS</div> <div>6 NONE</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 4</div>
<div>1 I N D E X</div> <div>2</div> <div>3 Appearances 2</div> <div>4 ROBERT L. KEHR</div> <div>5 Examination by Mr. Brant C. Martin 6</div> <div>6 Changes and Signature 142</div> <div>7 Reporter's Certificate 144</div> <div>8 Further Certificate 146</div> <div>9</div> <div>10 EXHIBITS</div> <div>11 NO. DESCRIPTION PAGE</div> <div>12 Exhibit 1 Highland Expert Disclosure 51</div> <div>13 Exhibit 2 Kehr Engagement Letter 96</div> <div>14 Exhibit 3 HCMLP Expert Production 75</div> <div>15 Exhibit 4 Release from Loan Agreement 98</div> <div>16 Exhibit 5 Bridge Loan Agreement 100</div> <div>17 Exhibit 6 Unicorn PSA's 110</div> <div>18 Exhibit 7 Email Re LLC's to be Formed 122</div> <div>19 Exhibit 8 Email Re DST Structures 124</div> <div>20 Exhibit 10 Mark Patrick Deposition 125</div> <div>21 Exhibit 11 Original LLC Agreement 130</div> <div>22 Exhibit 12 First Amended LLC Agreement 133</div> <div>23 Exhibit 14 McGrandier Declaration 116</div> <div>24</div> <div>25</div> <div>Page 3</div>	<div>1 REPORTERS NOTE: Please note this deposition was taken</div> <div>2 via Zoom; therefore, due to the poor quality of the Zoom</div> <div>3 videoconference, audio distortions, internet connections</div> <div>4 freezing, extraneous room noise, et cetera,</div> <div>5 unintelligent, indiscernible, or inaudibles may have</div> <div>6 created inaccuracies in the transcription.</div> <div>7 THE REPORTER: Would the witness please raise</div> <div>8 their right hand? Do you solemnly swear to tell the</div> <div>9 truth, the whole truth, and nothing but the truth?</div> <div>10 THE WITNESS: I do.</div> <div>11 ROBERT L. KEHR,</div> <div>12 having been first duly sworn was examined and testified</div> <div>13 as follows:</div> <div>14 EXAMINATION</div> <div>15 THE REPORTER: Will counsel present please</div> <div>16 state their appearances for the record.</div> <div>17 MR. MARTIN: Good morning. This is Brant</div> <div>18 Martin from Wick, Phillips, Gould, and Martin, and with</div> <div>19 me is also one of my partners, Ms. Lauren Drawhorn. We</div> <div>20 represent NexPoint Real Estate Partners, LLC.</div> <div>21 MR. BROWN: Good morning. Kenneth Brown from</div> <div>22 the Law Firm of Pachulski, Stang, Ziehl, and Jones</div> <div>23 representing Highland Capital Management, the debtor.</div> <div>24 MR. MARTIN: Ms. McLaughlin, do you want to</div> <div>25 make your appearance just for the record?</div> <div>Page 5</div>

<p>1 MS. MCLAUGHLIN: Certainly. My name is Shannon 2 McLaughlin of Latham and Watkins, LLP, and we represent 3 UBS Securities, LLC, and UBS AG London Branch, as 4 creditors in the bankruptcy. 5 BY MR. MARTIN: 6 Q All right. Mr. Kehr, are you ready to proceed? 7 A I am. 8 Q Excellent. Can you identify yourself for the 9 record please? 10 A Yes. I am Robert Kehr, and the last name is 11 spelled, K-E-H-R. 12 Q And, Mr. Kehr, how are you employed? 13 A I'm a partner in the law firm called Kehr, 14 Schiff, Crane, and Cohen. 15 Q How long have you been a partner with that 16 particular firm, sir? 17 A With slight name changes, this firm has existed 18 for 21 years. 19 Q And are you a founder of the firm? 20 A Yes. 21 Q And where is the firm located? 22 A In Los Angeles. 23 Q Mr. Kehr, again, we haven't met prior to today; 24 is that correct? 25 A Correct.</p> <p style="text-align: right;">Page 6</p>	<p>1 A Yes. 2 Q So I'll represent for the record I am here at 3 my office is Fort Worth, Texas. You, I believe, are in 4 your home in California; is that right? 5 A I am actually in my office in -- 6 Q Oh -- 7 A -- In California. 8 Q Excellent. What city are you in in California? 9 A Century City which is Los Angeles. 10 Q I know it well. And, Mr. Brown, I believe you 11 are in your home office in California; is that correct? 12 MR. BROWN: Correct. In Oakland. 13 Q Mr. Kehr, if at any point in time during this 14 new day and age when we're doing many things remotely, 15 if at any time you can't understand me or there is a 16 technical difficulty, I want you to let me know; is that 17 all right? 18 A Of course. 19 Q And I'm going to assume from your curriculum 20 vitae that you have participated in depositions before 21 either as an attorney or as a witness; is that right? 22 A It is. 23 Q So -- and I'm going to also assume that there 24 have been many depositions that you have participated 25 in; is that accurate as well?</p> <p style="text-align: right;">Page 8</p>
<p>1 Q And other than me asking you how to pronounce 2 your name prior to us going on the record, that's the 3 only conversations you and I have ever had; is that 4 correct? 5 A Yes. 6 Q And you understand my name is Brant Martin, and 7 that I represent NexPoint Real Estate Partners in this 8 matter? 9 A I understand. 10 Q And I believe you've been retained as an expert 11 by Mr. Brown and his firm in support of their motion to 12 disqualify my firm from representing NexPoint Real 13 Estate Partners. Do I have that correct? 14 A You do. 15 Q And we're here today on that matter, on the 16 motion to disqualify, and you are here to provide expert 17 opinions, correct? 18 A Correct. 19 Q And it's your understanding that you're not a 20 fact witness, right? 21 A That is correct. 22 Q I'm going to -- so -- and just for the clarity 23 of the record and since this is not being videotaped, 24 I'm going to clarify that this record is being taken -- 25 taken by Zoom by videoconference. You agree with that?</p> <p style="text-align: right;">Page 7</p>	<p>1 A Yes. 2 Q Can you even estimate for the court how many? 3 A I -- I couldn't begin. It would be a blind 4 guess. I've been practicing law for 50 years. 5 Q What's your primary area of practice? 6 A For the last many years, my practice has been 7 entirely transactional practice. I started off thinking 8 I wanted to be a litigator. Pretty quickly realized 9 that that was an unwise choice and transitioned into -- 10 into transactional work. Transition took, oh, 11 perhaps four or five years but was finished by -- was 12 finished at least 40 years ago. So of the past 40 13 years, I've been a transactional lawyer and part of my 14 transactional practice, my non-litigation practice is 15 advising lawyers, law firms, and companies that provide 16 services to or through lawyers and law firms about 17 professional responsibility of lawyers. 18 Q Excellent. Since you are a transactional 19 lawyer, I am going to run through a couple of ground 20 rules that will make this hopefully go faster. I'm 21 certainly aware that you're probably familiar with most 22 of them, but, again, in this day and age of Zoom and 23 pandemics, some of the ways we do things have changed. 24 So I'll ask for your patience as I go through some of 25 these. Is that okay with you?</p> <p style="text-align: right;">Page 9</p>

<p>1 A Of course. It's your deposition.</p> <p>2 Q Thank you. I appreciate that. First of all,</p> <p>3 let me ask you this. Is anybody else in the room with</p> <p>4 you?</p> <p>5 A No.</p> <p>6 Q Are you in contact with anyone else in any way,</p> <p>7 shape, or form whether electronically or otherwise --</p> <p>8 A No.</p> <p>9 Q -- While you're in the deposition?</p> <p>10 A No. I'm not. Well, my email is on the other</p> <p>11 computer screen so I could receive an email I suppose.</p> <p>12 Q I understand. That's fine. That's kind of my</p> <p>13 point, Mr. Kehr. I would advise you that under the</p> <p>14 rules, you're not allowed to contact anyone once you're</p> <p>15 sworn in as a witness, that includes Mr. Brown, so</p> <p>16 that -- and I would take the position that if you do</p> <p>17 communicate with anyone while you're being deposed, that</p> <p>18 I'm entitled to see those communications. Whether you</p> <p>19 agree with that or not, do you understand what my</p> <p>20 position would be?</p> <p>21 A Yes.</p> <p>22 Q Again, if you have any technology issues, if I</p> <p>23 happen to freeze up or Mr. Brown freezes up, I'll</p> <p>24 represent to you that I'm more than willing to be</p> <p>25 patient and to wait to make sure we get those taken care</p> <p style="text-align: right;">Page 10</p>	<p>1 A No.</p> <p>2 Q Have you ever been a party to a lawsuit in your</p> <p>3 personal capacity outside of your law firm?</p> <p>4 A No.</p> <p>5 Q How many times have you testified either at</p> <p>6 trial or a deposition or an arbitration?</p> <p>7 A I don't keep a running total of that. I can</p> <p>8 only say that I have testified at trial and at</p> <p>9 deposition multiple times.</p> <p>10 Q Do you know what subject matters you've</p> <p>11 testified on since you came here to the cases?</p> <p>12 A Well, I've testified on the professional</p> <p>13 responsibility of lawyers. I testified on fiduciary</p> <p>14 duties both in and outside of the lawyer context. I've</p> <p>15 testified several times on the reasonableness of legal</p> <p>16 fees. I've testified about some corporate law issues.</p> <p>17 That's all I can think of at the moment.</p> <p>18 Q Fair enough. When you've testified in those</p> <p>19 previous matters, has it always been as an expert</p> <p>20 witness?</p> <p>21 A I testified once that I can think of. No.</p> <p>22 Twice that I can think of as percipient witness.</p> <p>23 Q Just twice?</p> <p>24 A The only ones I can think of. Yes.</p> <p>25 Q Okay. Can you tell me when you testified as a</p> <p style="text-align: right;">Page 12</p>
<p>1 of so that we get your full and complete testimony; is</p> <p>2 that fair?</p> <p>3 A Yes.</p> <p>4 Q You're doing a great job of it now, but I would</p> <p>5 ask that you give me verbal answers to my questions</p> <p>6 rather than uh-huh or huh-uh, because those are</p> <p>7 difficult for Ms. Elizondo to take down. Do you</p> <p>8 understand?</p> <p>9 A I do.</p> <p>10 Q Sometimes, as you can probably already tell, I</p> <p>11 tend to talk a little fast. So if I don't -- if I do</p> <p>12 talk fast or you don't understand one of my questions, I</p> <p>13 welcome you to ask me to repeat it or rephrase it,</p> <p>14 because if you answer one of my questions, I'm going to</p> <p>15 assume that you understood it; is that fair?</p> <p>16 A It is.</p> <p>17 Q Excellent. Is there any reason whether mental,</p> <p>18 physical, or medical, that you cannot testify truthfully</p> <p>19 today?</p> <p>20 A No.</p> <p>21 Q Have you ever gone by any other names other</p> <p>22 than Robert Kehr?</p> <p>23 A No.</p> <p>24 Q Do you have any felony convictions or</p> <p>25 convictions of moral turpitude in the last ten years?</p> <p style="text-align: right;">Page 11</p>	<p>1 percipient witness, what the matter that you were</p> <p>2 testifying about was? Rather than being as an expert</p> <p>3 witness.</p> <p>4 A Yes. These both involved transactions in which</p> <p>5 I had been involved, and my client in each of these</p> <p>6 situations was pursuing rights related to the</p> <p>7 transaction that I had been involved in.</p> <p>8 Q All right. So as a fact witness, which is what</p> <p>9 we call it down here, you were testifying about what the</p> <p>10 documents said, who was involved, what was going on,</p> <p>11 rather than as an expert witness; is that right?</p> <p>12 A Correct.</p> <p>13 Q And if at any time, Mr. Kehr, you know the</p> <p>14 drill. If I summarize one of your answers, if I'm</p> <p>15 putting words into your mouth, that's not my intention,</p> <p>16 and I invite you to correct me. Can you do that for me?</p> <p>17 A I can.</p> <p>18 Q Excellent. The other times you testified other</p> <p>19 than those two matters, to your knowledge as we sit here</p> <p>20 today, the other times you testified were as an expert</p> <p>21 witness; is that correct?</p> <p>22 A Yes.</p> <p>23 Q And you indicated that you had testified -- I'm</p> <p>24 include -- I'm assuming that includes depositions or</p> <p>25 trials; is that right?</p> <p style="text-align: right;">Page 13</p>

<p>1 A Yes.</p> <p>2 Q How many times have you testified at trial?</p> <p>3 A I don't keep a total. I couldn't tell you.</p> <p>4 Certainly it's been at least a dozen times over the past</p> <p>5 30 years --</p> <p>6 Q All right.</p> <p>7 A -- A bit more than that, but I don't have any</p> <p>8 number that you could rely on.</p> <p>9 Q I appreciate that. When you testified in these</p> <p>10 other matters as an expert witness, was it always either</p> <p>11 about a lawyer's responsibilities and duties or as to</p> <p>12 attorney's fees? Is there any other areas that you've</p> <p>13 testified as an expert witness other than those two?</p> <p>14 A Yes. I've testified about fiduciary duty</p> <p>15 several times outside of the lawyer context.</p> <p>16 Q Fair enough. Anything else?</p> <p>17 A That's all I can think of at the moment.</p> <p>18 Q When you've testified in those others, have you</p> <p>19 testified -- well, I lost my train of thought. I</p> <p>20 apologize. Have all of those -- oh, I know what it</p> <p>21 was -- I was going to ask. Have you ever testified in a</p> <p>22 tribunal other than open court? For example, in front</p> <p>23 of a disciplinary proceeding involving a state bar?</p> <p>24 A Yes. I -- I did -- I think twice. Yes. I</p> <p>25 have.</p> <p style="text-align: right;">Page 14</p>	<p>1 presentations you've made primarily, if not solely,</p> <p>2 involve the California rules and not the Texas rules; is</p> <p>3 that correct?</p> <p>4 A Well, I would say they primarily involve the</p> <p>5 California rules, but several of them have been</p> <p>6 nationwide in scope where national -- where the rules of</p> <p>7 other jurisdictions which I would say primarily would be</p> <p>8 focused on the ABA model rules as the format that's the</p> <p>9 basis for which all 50 states and the District of</p> <p>10 Columbia on which they've based their -- their rules --</p> <p>11 (Simultaneous speakers)</p> <p>12 Q And none of your articles or presentations</p> <p>13 involve the Texas rules, correct?</p> <p>14 A You know, I can't say yes or no to that. It's</p> <p>15 certainly possible that -- that I've testified -- that</p> <p>16 I've done programs in which the Texas rules have come</p> <p>17 up, because I have done some programs that are not --</p> <p>18 not California programs, but I just wouldn't remember</p> <p>19 that after so many years.</p> <p>20 Q And, primarily, if you were testifying about</p> <p>21 something other than the California rules, I took from</p> <p>22 your previous answer that that testimony or analysis</p> <p>23 would be based primarily on the ABA model rules,</p> <p>24 correct?</p> <p>25 A I would say most commonly it would be, but I</p> <p style="text-align: right;">Page 16</p>
<p>1 Q And was that in California?</p> <p>2 A Both times in California. Yes. Once as a</p> <p>3 percipient witness and once as an expert witness.</p> <p>4 Q How many times of the other episodes in which</p> <p>5 you have testified as an expert witness regarding</p> <p>6 lawyer's duties, how many times has that been in</p> <p>7 California?</p> <p>8 A I don't think I've ever left California to</p> <p>9 testify when I've been in court or in an arbitration.</p> <p>10 It's always been in California.</p> <p>11 Q How many times have you testified regarding</p> <p>12 anything related to the Texas Disciplinary Rules of</p> <p>13 Professional Conduct?</p> <p>14 A I've advised on the Texas rules. I have a</p> <p>15 Texas client who I've advised several times. I don't</p> <p>16 offhand remember ever testifying about the Texas rules.</p> <p>17 MR. MARTIN: Objection. Nonresponsive.</p> <p>18 Q So to the extent that we're sitting here today,</p> <p>19 to the extent that you remember, you've never testified</p> <p>20 at deposition or in open court regarding matters</p> <p>21 involving the Texas Disciplinary Rules of Professional</p> <p>22 Conduct; is that correct?</p> <p>23 A I think that's right.</p> <p>24 Q And I have a copy of your CV which we're going</p> <p>25 to go over here in a second, but the articles and</p> <p style="text-align: right;">Page 15</p>	<p>1 can't tell you that I haven't done comparisons in</p> <p>2 testimony to the rules of other jurisdictions. Whether</p> <p>3 that includes Texas or not, I have no way of</p> <p>4 identifying.</p> <p>5 Q I understand. Thank you, Mr. Kehr. And that</p> <p>6 actually leads me to my next question. You would agree</p> <p>7 with me that the ABA model rules, while forming a basis</p> <p>8 for the adoption of somewhat uniform rules across the</p> <p>9 country, that in most, if not all, jurisdictions the ABA</p> <p>10 model rules are modified somewhat from jurisdiction to</p> <p>11 jurisdiction, correct?</p> <p>12 A They have been modified in every jurisdiction.</p> <p>13 Q Thank you.</p> <p>14 A In some jurisdictions, only a little, and other</p> <p>15 jurisdictions, more, but they're all based on the same</p> <p>16 premiss which are the underlying fiduciary duties that</p> <p>17 lawyers have more or less in common with other</p> <p>18 fiduciaries.</p> <p>19 Q All right. I understand that, sir, and I agree</p> <p>20 with you. Have you ever had a grievance filed against</p> <p>21 you?</p> <p>22 A Not that I know of.</p> <p>23 Q Have you ever been disciplined by any of the</p> <p>24 professional or business organizations of which you are</p> <p>25 or have been a member?</p> <p style="text-align: right;">Page 17</p>



<p>1 A No.</p> <p>2 Q What's the procedure for grievances in</p> <p>3 California? Do you know whether or not somebody files a</p> <p>4 grievance? Do they dismiss it without telling you?</p> <p>5 What's the -- what's the procedure?</p> <p>6 A Well, it depends on the nature of the</p> <p>7 grievance. There is an online system for anyone in the</p> <p>8 world to file a complaint about a lawyer, and only --</p> <p>9 only if it rises to a level of interest do -- is the</p> <p>10 complaint assigned to an investigator. We have a</p> <p>11 professional investigation group that are employed by</p> <p>12 the -- what's called The Office of Chief Trial Counsel</p> <p>13 and act under the supervision of a lawyer employed full</p> <p>14 time by OCTC.</p> <p>15 Q Have you served as part of the California Bar's</p> <p>16 disciplinary structure related to attorneys?</p> <p>17 A No. It's not a voluntary arrangement. Used to</p> <p>18 be years ago. But for many years, the disciplinary</p> <p>19 system has been entirely professionalized. There are</p> <p>20 full-time lawyers, staff, full-time investigators,</p> <p>21 separate bar courts with judges who wear robes and</p> <p>22 patches like normal judges.</p> <p>23 Q That's interesting because here in Texas there</p> <p>24 are -- there are tribunals. There is actually lawyers</p> <p>25 that serve as voluntary -- voluntary arbiters, if you</p> <p style="text-align: right;">Page 18</p>	<p>1 that?</p> <p>2 A I can't offhand. No.</p> <p>3 Q How much of your practice is providing expert</p> <p>4 testimony?</p> <p>5 A Well, that varies enormously from month to</p> <p>6 month and year to year, but I would say it's a -- it's a</p> <p>7 small minority of all of my time.</p> <p>8 Q Can you give a -- even a ballpark percentage of</p> <p>9 the amount of time you spend regarding expert testimony</p> <p>10 in your practice?</p> <p>11 A I'm uncomfortable giving any number because</p> <p>12 people will think I actually calculated it and I never</p> <p>13 have, but I'm comfortable saying that it's a small</p> <p>14 minority. I'm largely a transactional lawyer and part</p> <p>15 of that is advising lawyers, law firms, and others about</p> <p>16 professional responsibility matters.</p> <p>17 Q I -- I do understand that, Mr. Kehr, and you've</p> <p>18 made that very clear. I'll give you a disclaimer. I'm</p> <p>19 not going to hold you to the number, but when you're</p> <p>20 provided as an expert testimony trying to disqualify my</p> <p>21 firm, I'm very interested in what your qualifications</p> <p>22 are to provide that opinion. You understand that,</p> <p>23 right?</p> <p>24 A Of course.</p> <p>25 Q And if somebody was trying to disqualify your</p> <p style="text-align: right;">Page 20</p>
<p>1 will, of determining whether or not grievances have</p> <p>2 merit. You don't have that same system in California?</p> <p>3 A We have it only in the rare situation in which</p> <p>4 The Office of Chief Trial Counsel declares a conflict</p> <p>5 and then there are some lawyers around the state,</p> <p>6 litigators, with some degree of experience in</p> <p>7 professional responsibility matters who undertake to act</p> <p>8 as the prosecutor, the investigator and prosecutor, in</p> <p>9 those matters. I've never done that. I'm not a</p> <p>10 litigator.</p> <p>11 Q Well, I -- that was actually my next question,</p> <p>12 and I almost interrupted you. I apologize for that.</p> <p>13 You're not a litigator, right?</p> <p>14 A Correct.</p> <p>15 Q So in terms of analyzing a conflict, you've</p> <p>16 never actually had to analyze a conflict for a -- have</p> <p>17 you ever had to analyze a conflict for a matter you were</p> <p>18 taking on personally in terms of litigation?</p> <p>19 A Well, my firm, yes.</p> <p>20 Q Right. But I mean in your practice. Have you</p> <p>21 sat down and analyzed, if I take on this transaction,</p> <p>22 this is a, for instance, same or substantially related</p> <p>23 matter?</p> <p>24 A Of course.</p> <p>25 Q All right. Can you give me some examples of</p> <p style="text-align: right;">Page 19</p>	<p>1 firm, you would take that very seriously, correct?</p> <p>2 A Of course.</p> <p>3 Q And so if someone was proffered as an expert</p> <p>4 witness to disqualify your firm, you would want to know</p> <p>5 what experience they have analyzing the situation under</p> <p>6 which they were offering that opinion, correct?</p> <p>7 A Fair enough.</p> <p>8 Q All right. So if you could even give me an</p> <p>9 estimate of the amount of time that you spend analyzing</p> <p>10 litigation conflicts as an expert witness, I would</p> <p>11 appreciate it.</p> <p>12 A Couldn't possibly do that because you've just</p> <p>13 redefined your question from analyzing conflicts -- I'm</p> <p>14 sorry. From testifying as to expert witness to</p> <p>15 analyzing conflicts in litigation for expert witness</p> <p>16 purposes. I couldn't begin to do that, but I can tell</p> <p>17 you that the analysis of conflicts in the litigation and</p> <p>18 non-litigation contexts, are -- are precisely the same.</p> <p>19 The underlying fiduciary duties are the same. The</p> <p>20 expectations of the legal system with regard to the</p> <p>21 conduct of lawyers is the same, and the importance of it</p> <p>22 to the legal system and to the system of law and the</p> <p>23 court system is the same whether it's litigation or a</p> <p>24 non-litigation matter.</p> <p>25 Q Well, Mr. Kehr, I'll tell you I agree with that</p> <p style="text-align: right;">Page 21</p>

<p>1 statement as well, but let me ask you a question, and I 2 think it's important that you and I define some terms 3 right now. You keep coming back to the concept of 4 fiduciary duty, and I know what a fiduciary duty is, and 5 I think I know what you mean by it. Are you equating a 6 conflict under the Texas Rules of Disciplinary Procedure 7 as being the same as a breach of fiduciary duty? 8 A Well, the -- the Texas rules are disciplinary 9 rules, and it -- it is generally the rule that a lawyer 10 cannot be professionally disciplined except for 11 violating an explicit standard that is contained in the 12 disciplinary rules. That's true everywhere that I've 13 ever looked. Disciplinary authorities don't have the 14 ability to fill in gaps or in effect invent new rules, 15 but in a courtroom setting, which would include the 16 disqualification setting, the trial court is free to do 17 whatever it wants. The rules of professional conduct 18 are important evidence of what lawyers are required to 19 do and are prohibited from doing, but they don't cover 20 the water front. 21 Those -- those rules are written in a fairly 22 narrow way for purposes of discipline. The idea of 23 being that a lawyer shouldn't be disciplined unless 24 there is a reasonable explicit rule that gives fair 25 notice to the lawyer what the lawyer is required to or</p> <p style="text-align: right;">Page 22</p>	<p>1 be a correct statement that -- that there is going to be 2 a fiduciary breach if there is a violation -- a conflict 3 violation of one of the conflict rules. 4 Q Okay. So I think you answered my question, but 5 I want to make it very clear, and let's get this on the 6 record. So you think that in this situation, my firm 7 breached a fiduciary duty by taking on the 8 representation that you think we should be disqualified 9 from pursuing, right? 10 A Correct. That's correct. 11 Q That's not in the summary of your findings. 12 MR. BROWN: Well, objection. All the findings 13 were -- they weren't findings. They were just a 14 disclosure of what he was going to express an opinion on 15 at trial, and he's not going to -- you've asked him 16 that, but he is not -- that's not something he is 17 expressing an opinion on at trial. That's why they're 18 not in what you call, "The findings." They're not 19 findings. They're just the disclosure of what he is 20 going to opine on at the hearing on this matter. 21 MR. MARTIN: Mr. Brown, respectfully, I would 22 ask you to keep your objection to that which is allowed 23 under the federal rules -- 24 MR. BROWN: No. I was -- I think I'm entitled 25 to correct misstatements you make on the record, and --</p> <p style="text-align: right;">Page 24</p>
<p>1 prohibited from doing. But in a disqualification 2 setting, the court can ignore the rule. It can decline 3 to disqualify even if there is a -- an apparent 4 violation of the rule, or it can disqualify even if 5 there is no clear authority that the rule itself has 6 been violated. 7 These rules are based on the underlying 8 fiduciary duties of lawyers, and they exist for the 9 functioning of the legal system. That's a long 10 discussion I hope we don't need to have, but I think 11 it's important that the fiduciary duties are never 12 ignored. 13 MR. MARTIN: I object as nonresponsive. 14 Q Mr. Kehr, I believe my question was, do you 15 equate a conflict under the disciplinary rules with a 16 breach of fiduciary duty? 17 A I think that if there is ever a conflict under 18 the disciplinary rules, there is a breach of fiduciary 19 duty. 20 Q Per say? 21 A I think that's probably true. It would take a 22 long time to think about all of the possible 23 hypothetical's, but because the rules are based on 24 fiduciary duties, loyalty, confidentiality, full 25 disclosure, then I think it's -- it's probably going to</p> <p style="text-align: right;">Page 23</p>	<p>1 (Simultaneous speakers) 2 MR. BROWN: I'm going to continue to do that, 3 Mr. Martin. So every time you make a misstatement, I am 4 going to correct it on the record, and you made a 5 misstatement. 6 MR. MARTIN: I don't believe I made a 7 misstatement, but to the extent that you're objecting to 8 my use of the word findings, I'll withdraw it and I'll 9 rephrase it. 10 Q Mr. Kehr, in the summary that was provided to 11 me of what you were going to testify about, I don't 12 believe it appeared that you were going to testify that 13 there was an actual breach of fiduciary duty by my firm. 14 Now, the reason this is important, and you and I may 15 disagree on this, but I draw a distinction between a 16 conflict under the disciplinary rules and a breach of 17 the fiduciary duty, and your answer to my previous 18 question takes this to an entirely new level for me. So 19 I need to make this very clear what I'm asking you. 20 Do you believe that the conflict that you're 21 testifying about today equates to a breach of fiduciary 22 duty by my firm? 23 MR. BROWN: Objection. Goes beyond the 24 designation that we've submitted. He is not going to 25 opine on that, and we have made it clear he is not.</p> <p style="text-align: right;">Page 25</p>

<p>1 A The answer to the question is, yes.</p> <p>2 Q Thank you.</p> <p>3 MR. MARTIN: Mr. Brown, are you willing to</p> <p>4 stipulate that he's not going stipulate in this matter</p> <p>5 that there was a breach of fiduciary duty by my firm?</p> <p>6 MR. BROWN: We're willing to live by the</p> <p>7 designation. That's what I'll -- what his opinions are</p> <p>8 as set forth in the designation.</p> <p>9 MR. MARTIN: You can't have it both ways.</p> <p>10 MR. BROWN: I'm not willing to stipulate to</p> <p>11 anything with you right now, Mr. Martin.</p> <p>12 MR. MARTIN: Okay. Well, I need to put this on</p> <p>13 the record. So -- and Mr. Kehr, nobody is picking on</p> <p>14 you just because Mr. Brown and I have having a fight.</p> <p>15 My point in making this record is this: When I was</p> <p>16 preparing for this deposition to depose this witness, I</p> <p>17 was operating off of the description that was given to</p> <p>18 me by opposing counsel which was that this witness was</p> <p>19 going to opine that there was a conflict. Within the</p> <p>20 first 20 minutes of this deposition, it appears that</p> <p>21 this witness equates a violation of the disciplinary</p> <p>22 rules with a breach of fiduciary duty.</p> <p>23 A You've -- you've overstated what I said before.</p> <p>24 Q Please clarify.</p> <p>25 A I talked only about the conflict rules.</p> <p style="text-align: right;">Page 26</p>	<p>1 So, therefore, I want to take it up with the</p> <p>2 court which is why I'm making this record. Mr. Brown</p> <p>3 and I are not going to agree on this today, but I want</p> <p>4 to take it up with the court that to the extent that</p> <p>5 there is going to be any evidence offered that my firm</p> <p>6 might have breached a fiduciary duty, which I believe is</p> <p>7 separate from the conflict rules, then I'm going to</p> <p>8 object to that, because to me, that's a far more serious</p> <p>9 allegation. That's all I was trying to put on to the</p> <p>10 record.</p> <p>11 MR. BROWN: Yeah. And -- and Brant -- Brant,</p> <p>12 let me just -- I think that we may be able to clarify</p> <p>13 this. I need to talk to Mr. Kehr off the record,</p> <p>14 because I don't believe we've designated him as an</p> <p>15 expert on breach of fiduciary duty. I don't believe</p> <p>16 that we're going to offer any testimony by him with</p> <p>17 respect to the firms breach of fiduciary duty other</p> <p>18 than -- well, what he is going to testify to is that, in</p> <p>19 a sense, that there was a violation of rule 109 of the</p> <p>20 Texas Disciplinary Rules. I don't think there is any</p> <p>21 need for him to get into the breach of fiduciary duty.</p> <p>22 The reason he answered that question is you specifically</p> <p>23 asked him. If you had asked him, "What are you going to</p> <p>24 express an opinion on at the hearing?" That wouldn't</p> <p>25 have been included.</p> <p style="text-align: right;">Page 28</p>
<p>1 Q Okay. But I asked you --</p> <p>2 A There is lots of other rules, and -- and I'm</p> <p>3 not able as I sit here to think about the -- I'm not</p> <p>4 certain how many there are in Texas, roughly 65 rules of</p> <p>5 professional conduct, and it would take me a good deal</p> <p>6 of time to think through your question with regard to</p> <p>7 each of the rules.</p> <p>8 Q Sure.</p> <p>9 A But with regard to conflict rules, they are</p> <p>10 based on underlying fiduciary principles which are</p> <p>11 confidentiality and loyalty principles, they're both</p> <p>12 fiduciary duties, and if a lawyer were to violate</p> <p>13 confidentiality or loyalty standards, creating -- as a</p> <p>14 result of a conflict of interest, I believe that there</p> <p>15 is both a disciplinary violation under the rules --</p> <p>16 disciplinary rules of -- in Texas and of the fiduciary</p> <p>17 duty on which those rules are based.</p> <p>18 MR. MARTIN: I -- I understand that, Mr. Kehr,</p> <p>19 and I -- that's not the distinction I'm trying to make.</p> <p>20 So I'll try to be even clearer about that. My point</p> <p>21 was, is that you've been disclosed as an expert witness</p> <p>22 regarding conflict rules, right? And then now you're</p> <p>23 saying that there was a breach of fiduciary duty. To</p> <p>24 me, that takes it to another level in terms of the</p> <p>25 accusations against my firm.</p> <p style="text-align: right;">Page 27</p>	<p>1 So if you want a stipulation, I'm happy to</p> <p>2 consider it, but I need to talk to Mr. Kehr off the</p> <p>3 record. So perhaps we can save this for a break and</p> <p>4 come back to it, because I think we're -- I think</p> <p>5 we're -- we're mashing gears here without the need to do</p> <p>6 so, because I don't think that this is something that's</p> <p>7 going to come up at the hearing.</p> <p>8 MR. MARTIN: Okay. Well, I think we've made</p> <p>9 our record regardless. I appreciate that attempt at</p> <p>10 clarification, Ken. I think that, you know, we've made</p> <p>11 our record, and we can move on so I appreciate the --</p> <p>12 the dialogue.</p> <p>13 MR. BROWN: And I agree. It's not in -- it's</p> <p>14 not in the designation. It's simply not.</p> <p>15 Q I understand. I understand. Mr. Kehr, thank</p> <p>16 you for your patience.</p> <p>17 A No problem.</p> <p>18 Q Are you -- are you aware of -- in all your</p> <p>19 other expert testimony regardless of the subject, are</p> <p>20 you aware of any time that your opinion has been struck</p> <p>21 by a court?</p> <p>22 A I can think of one time when I was not allowed</p> <p>23 to testify.</p> <p>24 Q Tell me about that.</p> <p>25 A There was a criminal prosecution of a lawyer</p> <p style="text-align: right;">Page 29</p>

<p>1 for -- I'm trying to think of what the term is in the 2 criminal law. Let's just call it blackmail. 3 Q Oh. 4 A That's probably not the statutory term. And 5 the defense lawyer wanted to offer testimony about 6 certain aspects of lawyer conduct, and the court ruled 7 that no expert testimony would be permitted. That's the 8 only instance I can think of. 9 Q Thank you. I'm going to ask a little bit of a 10 separate question now so listen for the distinction, and 11 if you don't get it, I want you to ask me to clarify, 12 but there is a difference between being struck as an 13 expert and having an expert opinion of your's limited in 14 some way. Are you aware of any instance in which your 15 expert opinion has been limited in any way by a court or 16 a tribunal? 17 A Oh, my. Well, it seems to me that it's -- it's 18 certainly possible that there have been limitations. 19 Quite possibly limitations I'm not even aware of as a 20 result of in limine motions and discussions among trial 21 counsel and the court. I can't think of an instance. I 22 can only say that I can't think of any as I sit here. 23 Q Thank you. And you've never taught any classes 24 on the Texas Disciplinary Rules of Professional Conduct, 25 correct?</p> <p style="text-align: right;">Page 30</p>	<p>1 retention letter? 2 A I received a call from one of Ken's partners. 3 I'm going to -- I'm going to estimate two weeks before I 4 was retained. 5 Q Okay. 6 A And he -- he asked me questions that turned out 7 to be about this situation. Although, in those -- I 8 think we had two or three conversations. Give me a 9 moment to think about this because I'm trying to draw a 10 picture in my mind. I was somewhere out of doors on an 11 iPhone. I can't remember exactly what the context was. 12 I'm sorry. 13 Q It's okay. That's usually how I ask people to 14 remember. That's why I always say was it football 15 season or was it basketball season because sometimes 16 that triggers people's memories on exactly the situation 17 that you're talking about. So please -- please take 18 your time. 19 A My best estimate is I had perhaps three 20 phonecalls with one of Ken's partners asking me 21 questions about what turned out to be this situation 22 although he didn't tell me who was involved. And then 23 subsequently I got a call from -- I think one of the 24 other firm partners involved in the Highland Capital 25 Management situation, and I drew the connection between</p> <p style="text-align: right;">Page 32</p>
<p>1 A That's correct. 2 Q When were you retained in this case? 3 A You know, I'd have to look at my computer to 4 try to figure out when I was first contacted. I'm just 5 not sure of that. 6 Q Could you estimate it? Like, what season was 7 it? Was it cold? Was it football season? I mean, 8 it's -- it's kind of important to know. 9 A You know, we don't have seasons in Los Angeles. 10 Q Fair enough. 11 A It [inaudible] stays the same. 12 (Simultaneous speakers) 13 MR. BROWN: You have his retention letter. I 14 know we produced it to you. 15 Q Oh, you know what? That's a great idea, 16 because we do have that. I wasn't there yet, but let me 17 go ahead and go there. So, Mr. Kehr, I've got your 18 retention letter here as June 18th, 2021. As we sit 19 here today, it's September 16th, 2021. So that's -- 20 let's see. July, August, September. That was three 21 months ago. Does that sound about right? 22 A Fair enough. I can live with that. 23 Q All right. In your memory as we sit here 24 today, can you remember how much time elapsed between 25 when you were first contacted about this and your</p> <p style="text-align: right;">Page 31</p>	<p>1 those roughly three calls I had with another partner. 2 So I'm going to say for -- as an estimate, two weeks 3 before I was retained. 4 Q All right. So two weeks prior to your 5 retention -- your retention was on June 18th, 2021, and, 6 again, I'm not going to hold you to the exact date. Can 7 we agree that some time in early June 2021 is when you 8 think you were first contacted about this case? 9 A I think that's a -- that's a fair estimate. 10 Q Thank you. And what was the name of the 11 partner that first contacted you that you had the two or 12 three conversations with? 13 A Stan Goldich, G-O-L-D-I-C-H. 14 Q And is Mr. Goldich a professional colleague or 15 a friend? 16 A He and I served on a LA County Bar Committee 17 together a number of years ago, and that's how we first 18 met. 19 Q Are you friends? I mean, how -- how often do 20 you speak to Mr. Goldich? 21 A Rarely. 22 Q Okay. And what was the name of the second 23 colleague of Mr. Brown's that you spoke to when you put 24 it together that it was the same case that Mr. Goldich 25 had called you about?</p> <p style="text-align: right;">Page 33</p>

<p>1 A That I don't know. There have been -- it seems 2 like about a half a dozen firm lawyers who I've had 3 contact with at one time or another, and I just don't 4 remember the order of them, and these are all people who 5 I've never physically seen so I have no mental picture 6 to call on.</p> <p>7 Q Fair enough. Do you know whether or not it was 8 a man or a woman?</p> <p>9 A Man.</p> <p>10 Q And you said partner. Do you know it was a 11 partner, or could it have been an associate?</p> <p>12 A I can't be certain.</p> <p>13 Q Fair enough. Tell me about that conversation 14 when you put it together that this was the same case 15 Mr. Goldich had called you about.</p> <p>16 MR. BROWN: I'm going to caution you, Mr. Kehr. 17 Unless you considered the -- whatever information you 18 got in these calls and in forming the opinions that 19 you've been designated to testify on in this case, the 20 conversations that you had about this case with lawyers 21 from the Pachulski firm are work product and or are 22 privileged, and so I want you to be careful not to 23 disclose information that you did not consider in 24 forming your opinions.</p> <p>25 A Okay. I'm fine with that. But my answer was</p> <p style="text-align: right;">Page 34</p>	<p>1 clarification in here. So you're taking the position 2 that any conversations that your firm had with an expert 3 are not discoverable based on work product or privilege 4 if they didn't form the basis of his opinion.</p> <p>5 MR. BROWN: He didn't consider it in forming 6 the opinions he's going to give in this case. If my 7 firm consulted with Mr. Kehr on legal issues unrelated 8 to this matter, yes, those are privilege.</p> <p>9 MR. MARTIN: All right. Well, fair enough. 10 I'm not conceding that but I understand your position 11 and that's why I wanted the clarification. Let me take 12 it one step further and ask you this. If he has a 13 conversation with somebody from your firm about this 14 disqualification motion, are you instructing him not to 15 answer or to limit his testimony in any way if it 16 involved this disqualification motion?</p> <p>17 MR. BROWN: I'm -- he needs -- it's under Rule 18 26, it's not work product protected if he considered it 19 in forming his opinions. So to the extent he considered 20 it, he can disclose it. To the extent he had 21 conversations and communications with my firm that he 22 didn't consider in forming his opinions, it's work 23 product.</p> <p>24 Q Thank you. Mr. Kehr, I think the question that 25 I originally asked you -- let me rephrase it --</p> <p style="text-align: right;">Page 36</p>
<p>1 going to be even less helpful than that. There is no 2 way I can distinguish individual conversations. During 3 the past three months, I've probably had, you know, 20 4 or 30 conversations with different people at the firm 5 with regard to the underlying circumstances, facts, 6 their discovery of new facts, scheduling questions, and 7 so on and so forth, and it's a complete jumble. I can't 8 distinguish conversations.</p> <p>9 Q Have you had any conversations with anybody at 10 Mr. Brown's firms about any matter related to Highland 11 Capital other than this disqualification motion?</p> <p>12 A I'm just trying to distinguish -- give me a 13 moment. I think the answer is yes.</p> <p>14 Q Okay. Can you tell me what other matters 15 you've had conversations about other than this 16 disqualification motion?</p> <p>17 MR. BROWN: Again, I'm going to caution you, 18 Mr. Kehr. The conversations -- this is even more 19 limited because to the extent you've had conversations 20 with Counsel at Pachulski on other matters, obviously 21 you had to consider them in forming your opinion. So 22 those would either be work product or privileged. And 23 so to the extent those communications relate to work 24 product or privilege, I'm instructing you not to answer.</p> <p>25 MR. MARTIN: Mr. Brown, I just want to get a</p> <p style="text-align: right;">Page 35</p>	<p>1 A Sure.</p> <p>2 Q -- To perhaps assuage Mr. Browns concerns. If 3 you had any conversation -- without revealing the 4 contents of any conversations, have you had 5 conversations with anybody about -- from his firm about 6 any matter other than this disqualification motion? 7 Just give me the subject matter if you have.</p> <p>8 A Well, I don't -- I don't think I can do that. 9 I have known Stan Goldich for -- and I'm just going to 10 roughly estimate 20 years, and he has called me from 11 time to time with questions about the -- I think 12 probably always about the professional responsibilities 13 of lawyers. Most of time I probably made no notes of 14 those things, and these are things that have been gone 15 from my memory for ages. I have no practical way of 16 answering your question except I have been in touch from 17 time to time on a variety of matters --</p> <p>18 Q Are -- sorry. I didn't want to interrupt you. 19 I apologize. Go ahead.</p> <p>20 A No. That's okay. Please go ahead.</p> <p>21 Q Okay. We established that you were first 22 contacted about this disqualification some time in early 23 June 2021, correct?</p> <p>24 A Yes. I think that's a fair estimate.</p> <p>25 Q All right. So that was three months ago,</p> <p style="text-align: right;">Page 37</p>



<p>1 right?</p> <p>2 A Right.</p> <p>3 Q Have you had any discussion with anybody at</p> <p>4 Mr. Brown's firm in the last three months about anything</p> <p>5 related to Highland that was not about this</p> <p>6 disqualification motion?</p> <p>7 A Yeah. I think you asked me that before, and I</p> <p>8 think the answer is, yes. I think there have been</p> <p>9 conversations about the Highland situation that didn't</p> <p>10 directly relate to the disqualification motion.</p> <p>11 Q Can you identify those matters by subject</p> <p>12 matter without revealing the contents of the</p> <p>13 conversation?</p> <p>14 A I really can't. I have -- I have no clear</p> <p>15 recollection of what discussions there might have been,</p> <p>16 but I'm pretty sure that's -- that's happened. Give me</p> <p>17 one moment to turn off my phone which just tried to tell</p> <p>18 me there was a call coming in. Okay. Go ahead.</p> <p>19 Q Sure. All right. Do you know whether or not</p> <p>20 you've been designated as an expert by Mr. Brown's firm</p> <p>21 in any other matters?</p> <p>22 A Not that I know of. I don't think so.</p> <p>23 Q Do you know whether or not -- or let me ask it</p> <p>24 a different way. Have you prepared or reviewed</p> <p>25 materials related to any matter from Mr. Brown's firm</p> <p>Page 38</p>	<p>1 Q Other than Highland and other than this</p> <p>2 disqualification, how many other times have you been</p> <p>3 retained by Mr. Brown's firm as an expert witness?</p> <p>4 A To the best of my memory, I never have been.</p> <p>5 Q When you were analyzing this matter and this</p> <p>6 disqualification matter, did you analyze whether or not</p> <p>7 it would have been more appropriate to have an expert on</p> <p>8 the Texas rules be the expert in this case? Did you</p> <p>9 consider that?</p> <p>10 A Well, I think I am an expert on the Texas</p> <p>11 rules. My -- my involvement with the rules to</p> <p>12 professional conduct is nationwide. I advise two</p> <p>13 international law firms, other multi-branch law firms,</p> <p>14 and one continuing Texas client. I -- I dealt -- I</p> <p>15 regularly deal with the rules of professional conduct</p> <p>16 all across the country. That's probably a slight</p> <p>17 exaggeration. I don't offhand remember ever having</p> <p>18 advised any -- anybody on the North Dakota rules, but I</p> <p>19 have advised on the rules in Texas, Washington, DC,</p> <p>20 Virginia, South Carolina, Massachusetts, New York,</p> <p>21 Nevada.</p> <p>22 Q I -- I understand that, Mr. Kehr, but your</p> <p>23 previous answer was that you do consider yourself an</p> <p>24 expert on the Texas rules, correct?</p> <p>25 A Correct.</p> <p>Page 40</p>
<p>1 involving Highland other than this disqualification</p> <p>2 motion?</p> <p>3 MR. BROWN: I'm sorry. You broke up, Brant.</p> <p>4 Could you just repeat it? I didn't get -- I didn't hear</p> <p>5 the question.</p> <p>6 Q Sure. Mr. Kehr, have you reviewed any</p> <p>7 materials or provided even a preliminary opinion on any</p> <p>8 other matters involving Highland other than this</p> <p>9 disqualification motion?</p> <p>10 A Prepared materials, I think the answer is, no.</p> <p>11 Reviewed materials, possibly. That would require a</p> <p>12 computer search to see whether I -- whether my</p> <p>13 interactions with the firm have all been verbal or</p> <p>14 whether I actually received something in writing. I'm</p> <p>15 just not sure of the answer to that.</p> <p>16 Q Can you identify by subject matter what the</p> <p>17 other matters might have been that you have worked with</p> <p>18 Mr. Brown's firm on in involving Highland other than</p> <p>19 this disqualification?</p> <p>20 MR. BROWN: I think asked -- objection. Asked</p> <p>21 and answered.</p> <p>22 Q You can answer it, Mr. Kehr.</p> <p>23 A The answer is, no. I can't.</p> <p>24 Q You can't identify the subject matter, right?</p> <p>25 A No.</p> <p>Page 39</p>	<p>1 Q Okay. How many times have you consulted on the</p> <p>2 Texas rules such that you believe it qualifies you as an</p> <p>3 expert on the Texas rules?</p> <p>4 A Well, I don't think my expertise is based on</p> <p>5 how many times I've consulted on the Texas rules. The</p> <p>6 answer to that is, oh, maybe ten times as a very rough</p> <p>7 estimate, but I have studied the rules around the</p> <p>8 country when I was part of the commission that wrote the</p> <p>9 California Rules of Professional Conduct and that</p> <p>10 exercise, which went on for years, involved our</p> <p>11 comparing the rules in all other 49 states and</p> <p>12 Washington, DC, to look for ideas to see what the logic</p> <p>13 was and so on. We did a -- a 50 jurisdiction comparison</p> <p>14 and the Texas rules were certainly part of that. So</p> <p>15 I -- I have studied these rules. I did it over a period</p> <p>16 of years as well as consulting specifically on the Texas</p> <p>17 rules on multiple occasions.</p> <p>18 Q Mr. Kehr, have you ever testified in a case as</p> <p>19 an expert regarding the Texas rules specifically?</p> <p>20 A [inaudible]</p> <p>21 (Simultaneous speakers)</p> <p>22 MR. BROWN: Objection. Asked and answered.</p> <p>23 A Yeah.</p> <p>24 Q You have or you have not?</p> <p>25 A No. I don't believe I have.</p> <p>Page 41</p>

<p>1 Q Okay. Mr. Kehr, prior to this case, have you 2 ever worked with Mr. Brown before?</p> <p>3 A I don't think so.</p> <p>4 Q Have you ever worked with John Morris before?</p> <p>5 A I don't believe so.</p> <p>6 Q Have you ever worked with Jeffery Pomerantz 7 before?</p> <p>8 A I don't think so.</p> <p>9 Q How are you being compensated in this case?</p> <p>10 A Isn't -- isn't that in the court filing?</p> <p>11 Q It might be. I'm asking if you know.</p> <p>12 A I -- I send bills to Mr. Brown's firm which 13 then passes them on to Highland, and I'm paid by 14 Highland.</p> <p>15 Q And do you know what your rate is?</p> <p>16 A Not offhand. I don't remember.</p> <p>17 Q Do you know whether or not the bills have been 18 paid when they were submitted?</p> <p>19 A That's a good question. I don't offhand know 20 that. No.</p> <p>21 Q I own a firm too, Mr. Kehr, and I can -- you 22 know, that's one of the things I always look at is that 23 the client's are paying or not. You don't know whether 24 or not this client has been paid?</p> <p>25 A I'd have to check.</p> <p>Page 42</p>	<p>1 Q Is anyone else assisting you on this matter?</p> <p>2 A It's conceivable that my partner Rachelle Cohen 3 has spent a little bit of time on this. We often work 4 together, but I can't be certain without checking the 5 billing records.</p> <p>6 Q Do you know what parts of this case Ms. Cohen 7 may have worked on versus what parts you worked on 8 personally?</p> <p>9 A Either all or virtually all of the work has 10 been my personal work. If I've asked her to -- to 11 double check something for me, I -- I wouldn't be able 12 to identify that without looking at time records.</p> <p>13 Q And in connection with your work on this case, 14 when is the last time you read the Texas Rules of 15 Disciplinary Procedure?</p> <p>16 A You mean procedure?</p> <p>17 Q When is the last time you read the Texas rules 18 in connection with this case?</p> <p>19 A Okay. You asked the rules of procedure and 20 that's the reason I paused.</p> <p>21 Q Okay.</p> <p>22 A Yeah.</p> <p>23 MR. BROWN: Objection. The question is vague 24 and ambiguous as to what rules you're referring to.</p> <p>25 Q I apologize. Let me get the name right. Your Page 44</p>
<p>1 Q Do you know whether or not you charge a 2 different rate for analyzing the case versus providing 3 testimony?</p> <p>4 A I charge a single rate.</p> <p>5 Q But you don't know what that rate is, right?</p> <p>6 A I'd have to check to be certain.</p> <p>7 Q How many hours have you worked on this case?</p> <p>8 A Oh, I have no idea. That's by -- the computer 9 keeps track. I couldn't keep track without a --</p> <p>10 Q Well, that actually goes to my next question. 11 How frequently do you record your time on this case?</p> <p>12 A We have a billing system that allows us to 13 record time as we are performing services. It's -- it's 14 a written --</p> <p>15 (Simultaneous speakers)</p> <p>16 Q That's [inaudible] but it doesn't always 17 happen. My question is how often do you record your 18 time on this case?</p> <p>19 A Whenever I'm spending time on the case.</p> <p>20 Q Okay. So that's on a daily basis? If you're 21 working on this case, you automatically -- you 22 immediately record the time?</p> <p>23 A It's a minute by minute basis. It's a clock in 24 the system. You punch the clock when you start working 25 on a new matter, and it keeps track of the time.</p> <p>Page 43</p>	<p>1 opinion in based on at least Rule 109 of the Texas 2 Disciplinary Rules of Professional Conduct, correct?</p> <p>3 A Correct.</p> <p>4 Q When is the last time you read them in 5 connection with this case?</p> <p>6 A Yesterday.</p> <p>7 Q Okay. And which rules did you read?</p> <p>8 A I think on that instance, I only looked at 9 1.09.</p> <p>10 Q How many other of the rules did you consider in 11 analyzing this case?</p> <p>12 A I'm pretty sure I looked at 1.05. Probably -- 13 no. No. I'm not sure. 1.05, yes. It's the only one I 14 can think of offhand.</p> <p>15 Q So 1.05 and 1.09 and at -- I'm going to be 16 generous. I'm going to -- assuming -- your testimony 17 would be there might have been others, but you can't 18 remember them right now; is that right?</p> <p>19 A Yes. In order to be certain, I'd probably need 20 to put the rules in front of me and think through what 21 my analytical process was.</p> <p>22 Q Prior to working on this case, when was the 23 last time you had read the Texas rules?</p> <p>24 A I would estimate that the last time I got a 25 call specific to Texas was about a month before that.</p> <p>Page 45</p>

<p>1 Q Was that from Mr. Brown's firm, or was it 2 related to another matter? 3 A Another matter. 4 Q And you didn't testify or get designated as an 5 expert witness in that other matter, correct? 6 A No. It was advising a law firm about a Texas 7 situation. It was not an expert witness engagement. 8 Q I'm still a little troubled by somebody 9 retaining a California expert in a case involving the 10 Texas rules. So I'm going to ask you, part of your 11 basis for claiming to be an expert in the Texas rules is 12 your work for a Texas law firm; is that correct? 13 A That's part of it. Yeah. 14 Q All right. What's the name of that firm? 15 A I think the names of my clients are 16 confidential. 17 Q Okay. And I thought that might be your answer. 18 Are you -- you would rather not or you're refusing -- in 19 a nice way, you're refusing to answer that question 20 based on confidentiality; is that correct? 21 A Correct. 22 Q Is your compensation dependent on the outcome 23 of this case? 24 A No. 25 Q Have you ever been retained to testify for</p> <p style="text-align: right;">Page 46</p>	<p>1 A That's always the first step. And the second 2 step typically is a, kind of, high level 35,000-foot 3 overview of what the circumstances are. 4 Q And you take that into account in analyzing the 5 case, correct? 6 A It's -- it's -- to some degree, yes. But -- 7 but the initial discussion of that kind, my 8 understanding generally is indefinite and often 9 incorrect because the lawyer who tries to give me the 10 overview of something that the lawyer has already spent 11 hundreds of hours on. It is not digestible. It's got 12 to be slowed down. It's only when I start receiving 13 copies of materials that I can appreciate the -- the 14 full context and the details of a potential expert 15 witness engagement. 16 Q So is it your testimony that you did not take 17 into account anything in those first two or three 18 conversations in analyzing this case? 19 A No. I can't say that. I can only say that I 20 can't distinguish that conversation from the dozens of 21 others I've had or from the other sources of 22 information. The copies of the contracts that are 23 involved in this situation. It becomes a -- a -- a 24 combined source of information. 25 Q So because that is a combined source of</p> <p style="text-align: right;">Page 48</p>
<p>1 James Seery before now? 2 A No. 3 Q Do you know who James Seery is? 4 A I think he's the CEO now, isn't he? Of 5 Highland. 6 Q When you were first contacted about this case 7 and you started considering this case and analyzing it, 8 what were you told about the disqualification motion? 9 A [inaudible] 10 (Simultaneous speakers) 11 MR. BROWN: Well, again, I'm going to object to 12 the extent you considered matters that were told to you 13 by lawyers of Pachulski in forming your opinions. You 14 can testify to the extent they were considered. Beyond 15 that, it's work product, it's privilege, and I'm 16 instructing you not to answer. 17 Q Let me try to fix his objection, Mr. Kehr, 18 before you answer. When you're contacted about a case, 19 do you ask what the facts of the case are? 20 A Well, I think that somewhere early in my 21 discussions with -- with a law firm about a potential 22 expert witness engagement, I'm going to be given 23 initially the names of the players so we can check for 24 possible conflicts. 25 Q Sure.</p> <p style="text-align: right;">Page 47</p>	<p>1 information, you -- according to your lawyer's 2 instructions, don't want to testify as to what those 3 first conversations were. Do I have that correct? 4 A No. I'm telling you that I can't distinguish 5 those first conversations from other sources of 6 information and -- 7 Q What do you remember -- sorry. Go ahead. 8 A That's okay. You go ahead. 9 Q What do you remember from those first 10 conversations that you were told that you did take into 11 account in analyzing this case? 12 A I -- I -- again, I can't distinguish first 13 conversations from other sources of information. There 14 are particular topics such as, you know, how the Bridge 15 Loan worked. I might have heard about multiple times. 16 There is no way I can distinguish what I might have 17 heard in a first or second conversation from the other 18 sources of information. 19 THE REPORTER: Did you say, "How the Bridge 20 Loan worked"? 21 A It's bridge, B-R-I-D-G-E. The Bridge Loan. 22 Q Mr. Kehr, I need to state this simply because 23 we might have to take up with the court. Are you 24 willing to tell me about those initial two or three 25 conversations when you were first contacted about this</p> <p style="text-align: right;">Page 49</p>



<p>1 case, or do you feel that you can't do it because of 2 your lawyer's instruction? 3 A I -- I'm delighted to tell you about them if I 4 could. What I'm telling is I can't distinguish them 5 from other sources of information. 6 Q Right. 7 A I have an understanding today of what the 8 transactions involved and who the players were. I 9 obtained that information over a period of time from 10 multiple sources. I can't tell you which particular 11 source led to any particular element of my 12 understanding. 13 Q I understand. All right. Let's go to -- and, 14 Mr. Kehr, this is the part where we might experience 15 some technical difficulties because I'm technologically 16 sometimes not very adept. I'll just put it that way. 17 That's a nice way to say it. And we've been going about 18 an hour so I think now might be a good time for a 19 personal convenience break for about five minutes if 20 that's okay with everybody and then we'll come back and 21 we'll talk about some of the documents. Fair enough? 22 A Whatever you want. 23 Q Great. Come back in five. 24 (Recess from 11:31 a.m. to 11:41 a.m.) 25 Q Mr. Kehr, are you ready to proceed?</p> <p style="text-align: right;">Page 50</p>	<p>1 Mr. Kehr, do you see a document appearing on your 2 screen? 3 A I do. 4 Q Excellent. And if you'll see this documents 5 title -- and you're familiar with the style of cases in 6 litigation and where the title is on a document that's 7 filed in litigation, correct? 8 A Yes. 9 Q All right. This document's titled -- read 10 along with me. Is Highland Capital Management LP's 11 disclosure of intent to use as an expert witness at the 12 hearing on it's motion to disqualify Wick, Phillips, 13 Gould, and Martin, LLP. Did I read that correctly? 14 A Yes. 15 Q And I assume that you've seen this documents 16 before? 17 A Yes. 18 Q And when did -- when did you see this document? 19 A I think at about the time it was filed. 20 Q All right. And I'm going to direct your 21 attention on this document to page three. As we move 22 down, you'll see the heading there says, Summary of 23 Opinions. Did I read that correctly? 24 A Yes. 25 Q All right. And you understand that this is the</p> <p style="text-align: right;">Page 52</p>
<p>1 A I am. 2 Q And you understand you're still under oath? 3 A Correct. 4 Q All right. I'm going to ask you about some 5 documents now. So let me explain to you to speed us up 6 how this is going to work. Ms. Drawhorn is attending 7 this deposition with me in a different Zoom room, if you 8 will. She is going to put the exhibit up there, and I'm 9 going to ask you questions about each exhibit. To the 10 extent that I might be a little slow on the highlighting 11 or the emphasis on certain documents, I want you to ask 12 me to restate something. Because if you don't get it, 13 then, you know, that's trouble for both of us. Fair 14 enough? 15 A Yes. 16 Q All right. And before we go there, you're not 17 licensed in the State of Texas, correct? 18 A No. 19 Q And how many other jurisdictions other than 20 California are you licensed in? 21 A None. 22 (Exhibit No. 1 was marked for identification.) 23 Q Okay. All right. I want to go to Exhibit 1, 24 and I believe these were provided to you ahead of time. 25 If you need time to catch up, I want you to let me know.</p> <p style="text-align: right;">Page 51</p>	<p>1 summary of opinions we were provided that Mr. Brown used 2 to disclose what you were going to testify about, 3 correct? 4 A Yes. 5 Q How much input, if any, did you have into the 6 drafting or the editing of this summary? 7 A Well, I don't think I was involved in -- in 8 drafting or editing. I was involved in explaining to 9 Mr. Brown what my opinions are, how I analyze the 10 situation, and that became his summary of my opinion. 11 Q All right. So I'm taking it from that answer 12 that as far as you are concerned, Mr. Brown drafted this 13 summary of opinions, correct? 14 A Yes. I probably commented on it at some point, 15 but I think it's based on communications that he and I 16 had had before he did his summary. 17 Q Do you remember at any point editing this 18 document or a version of this summary prior to it being 19 filed? 20 A I don't. 21 Q Do you remember whether or not you provided any 22 red line comments or anything else to Mr. Brown 23 correcting a description of the summary? 24 A I don't. 25 Q You don't remember or you didn't do it?</p> <p style="text-align: right;">Page 53</p>

<p>1 A I don't remember whether I did. 2 Q All right. So let's go to -- well, let me ask 3 this question first. Since this document has been 4 filed, had you reviewed this summary of your opinions? 5 A I'm -- I'm not certain. I might have seen it 6 before it was filed. I might have seen it afterwards. 7 I'm just not certain. 8 Q Do you know whether or not this section of this 9 document accurately reflects what you think about this 10 case? 11 A I think it does in the summary fashion. Yes. 12 Q All right. I want to go to subsection B, and 13 I'm going to read the first bullet point under 14 subsection B, and I want you to follow along. 15 A If you could give me one -- if you could give 16 me one moment. I have a copy of it on my computer. 17 Q That would be great. 18 A And I'm to going open it up because on the 19 screen it's partly blocked by the -- by the images of 20 the participants. Okay. Go ahead. I'm ready. 21 Q All right. The first bullet point states, "A 22 lawyer owes two duties to a former client. These are 23 continuing duties of loyalty and of confidentiality. 24 Those are separate and independent duties. A lawyer can 25 violate the continuing duty of loyalty even if the</p> <p style="text-align: right;">Page 54</p>	<p>1 cannot assume a position hostile to the former client 2 and one inimical to the interests the lawyer previously 3 was engaged to protect. Am I correct in assuming that 4 in your opinion those are two separate situations? 5 A No. I don't think that's right. The -- there 6 are -- let me try to do it this way. 7 Q Sure. 8 A There are two continuing duties. A narrow 9 continuing duty of loyalty and a continuing duty of 10 confidentiality. Typically, the confidentiality issue 11 trumps everything else because, typically, in 12 disqualification motions, it's all that the court needs 13 to look at in order to determine whether the law firm 14 will be disqualified, but as the -- which sentence is 15 this? It's the final -- the long final sentence which 16 is roughly one, two, three -- the fifth sentence of that 17 paragraph I think. The long one. What that does is to 18 summarize that even if there is no confidential 19 information, the duty of loyalty does exist. It's -- 20 it's not common for there to be a loyalty duty without 21 confidentiality but it does exist, and the two duties 22 have historically been recognized as being distinct. 23 Q And in this case, you didn't find any evidence 24 that Wick Phillips was misusing confidential 25 information, correct?</p> <p style="text-align: right;">Page 56</p>
<p>1 lawyer possesses no confidential information of a former 2 client. An attorney who has acted as such for a former 3 client cannot render professional services adversely to 4 the former client in the same or substantially related 5 matter nor, in any event, whether it be in the same 6 matter or not, can the lawyer assume a position hostile 7 to the former client and one inimical to the interest 8 the lawyer previously was engaged to protect." Did I 9 read that correctly? 10 A You did. 11 Q All right. I want to ask you some general 12 questions about the statements of law that you put in 13 there. 14 A Sure. 15 Q And, again, Mr. Kehr, I don't want to put words 16 in your mouth, and I'm going to ask you these questions 17 knowing this is your shot to tell us what we did wrong. 18 Okay? So I want you to correct me if I say anything 19 wrong. But the way that I read that is that you 20 essentially identify two different situations there. I 21 read that one situation that you have a problem with is 22 an attorney who renders professional services adversely 23 to a former client in the same or substantially related 24 matter and then the second situation that you identify 25 is, whether it be in the same matter or not, the lawyer</p> <p style="text-align: right;">Page 55</p>	<p>1 A My view is that there is no confidential 2 information that I'm aware of, because there would have 3 been joint lawyer-client relationship, and in a joint 4 relationship, each client -- I'm sorry. The lawyer has 5 the same duty of full disclosure and loyalty to each 6 jointly represented client, and that means that the 7 lawyer cannot favor the interest of one joint client 8 over the other. So if the common lawyer obtains 9 material information about the engagement from one 10 client, the lawyer probably is obligated to share that 11 information with the other joint client. 12 Q And you didn't find that in this case, correct? 13 A I -- I don't understand your question. 14 Q You didn't find any violation of the duty of 15 confidentiality in this case related to Wick Phillips, 16 correct? 17 A No. I'm not aware of any evidence that there 18 is any confidential information as between the jointly 19 represented clients. 20 Q Right. 21 A A law firm in a joint representation owes an 22 equal duty to each client to maintain the 23 confidentiality. So that would go only to the outside 24 world. It wouldn't go to the sharing of information 25 between the jointly represented clients.</p> <p style="text-align: right;">Page 57</p>

<p>1 Q Right. And my question was, you didn't find 2 any evidence that Wick Phillips violated any duty 3 related to that sharing of confidential information, 4 correct? 5 A Correct. 6 Q All right. So that's -- and can you and I 7 agree that that's Texas Rule 105? 8 A Well, not exactly. The duty of confidentiality 9 is in 1.05, but you don't need to look -- I'm sorry. 10 You can't look only at 1.05 to understand the interplay. 11 Part of the concept here is that the duty of loyalty to 12 each jointly represented client which is not in 1.05, 13 but is an underlying fiduciary duty of lawyers prohibits 14 the lawyer from favoring the interests of any one joint 15 client. So that's what creates the sharing of 16 information as a general principle, and that would be 17 true in every jurisdiction. 18 Q You didn't find a violation of Texas Rule 1.05 19 in this case, correct? 20 A Correct. 21 Q All right. And, in fact, if I understand 22 your -- the summary of your opinions correctly, your 23 primary criticism is a violation, in your opinion, of 24 Texas Rule 1.09, correct? 25 A Correct.</p> <p>Page 58</p>	<p>1 A Okay. 2 Q Because the way I read that sentence was that 3 you were identifying two possible scenarios, and you 4 disagreed with that. So I want to investigate that a 5 little bit because that's -- I read it differently than 6 apparently how you mean it. I read that as two 7 scenarios. One is that a lawyer cannot render 8 professional services adversely to the former client in 9 the same or substantially related matter. That's one 10 scenario. And then the second scenario would be whether 11 it's in the same matter or not, a lawyer cannot assume a 12 position hostile to the former client and one inimical 13 to the interest the lawyer previously was engaged to 14 protect. Is that not two scenarios? 15 A Well, I think it is, but it's a highly unusual 16 situation for there to be a violation of the duty of 17 loyalty without the lawyer undertaking a representation 18 in the same or substantially related matter. There are 19 instances in which -- that would be outside that. And 20 this summary, which is actually a quotation from a case 21 or pretty close to a quotation from the case, covers the 22 water front. A -- what I thought was a rather 23 well-written summary of how these two duties -- two 24 former clients operate. 25 Q I -- I understand and that -- and that's why</p> <p>Page 60</p>
<p>1 Q And you are stating and you stated earlier 2 today, that the obligation under Texas Rule 1.09 has, as 3 it's basis, the fiduciary duty that lawyers owe to 4 clients, correct? 5 A I'm sorry. Would you say that again? It 6 didn't quite track for me. 7 Q Absolutely. You stated earlier today, and I 8 think even in your answer just now that the limitations 9 of 1.09 on what a lawyer can or cannot do, are informed 10 and, in fact, based in a lawyer's fiduciary duty to it's 11 client's, correct? 12 A Duties. Plural. Yes. 13 Q I said plural. I'm not -- I'm not trying to 14 trick you, sir. 15 A It came through as a singular. I think there 16 must have been -- the S was chopped off by the 17 electronics but yes. The answer is yes. 18 Q Okay. Fair enough. So your primary criticism 19 in this case of my firm's conduct is a violation of rule 20 1.09 [sic], correct? 21 A 1.09. Yes. 22 Q All right. Thank you. Now, I'm going to back 23 up because I asked you a question earlier about that 24 long sentence at the end of the first bullet point. So 25 take a look at it again.</p> <p>Page 59</p>	<p>1 I'm asking you the question, Mr. Kehr, is because I want 2 to make sure that I have the entire universe of what 3 you're criticizing Wick Phillips about. So I -- and I 4 will give you the opportunity by asking you an open 5 ended question. Based on that second sentence, what of 6 the duties of loyalty do you think Wick Phillips 7 violated? Is it -- did they render professional 8 services adversely to the former client in the same or 9 substantially related matter? Or did they assume a 10 position hostile to the former client and one inimical 11 to the interest the lawyer previously was engaged to 12 protect? Or was it both? 13 A Well, I -- I don't draw any distinction among 14 those three elements in my analysis. It doesn't make 15 any difference whether one were to consider that the 16 position that your firm is in now in the -- in it's 17 creditors claim is the same matter as the prior 18 engagement whether it would be considered substantially 19 related or it's simply taking the position that is 20 hostile to the interests it was formerly engaged to 21 protect. It -- it's irrelevant to the analysis to 22 determine which of those it is. 23 It's my view that it's the same matter, but my 24 opinion doesn't depend on the court determining that 25 it's the same matter. I mean, if I were a judge, I -- I</p> <p>Page 61</p>

<p>1 wouldn't pause over the question of whether it's the 2 same matter, substantially related, or simply hostile. 3 The question is -- or the answer, in my view, is the 4 same anyway that you want to look at it. But, again, I 5 view it as being the same matter. 6 Q And you're getting to the heart of this -- this 7 line of questioning, Mr. Kehr, so I appreciate that 8 because your position is that my firm's representation 9 in this adversary proceeding is the same or 10 substantially related matter to the previous 11 representation, correct? 12 A Yes. 13 Q My hypothetical is, let's say the court says, 14 no. It was not the same or substantially related 15 matter. Is it going to be your testimony that we still 16 violated rule 109? 17 A Yes. 18 Q Why? 19 A Because the creditor's claim and the effort to 20 reallocate ownership interest is hostile to the 21 interests that the firm previously was engaged to 22 protect in advance. 23 Q Do you think that a law firm cannot take a 24 position hostile to a former client even if the matter 25 is not the same or substantially related?</p> <p>Page 62</p>	<p>1 And so we have this situation where a lawyer is 2 rendering services adversely to the client in the same 3 or substantially related matter, and what I'm taking 4 from your testimony is, yes, that's a no-no. You can't 5 do that. All right. But you're saying it's broader 6 than that. That even if it wasn't the same or 7 substantially related matter, there is a second 8 component to this according to this case you quoted. 9 That second component being, even if it's not the same 10 or substantially related matter, that the lawyer could 11 still be violating Texas Rule 1.09 if it takes a 12 position hostile to the former client and one inimical 13 to the interest the lawyer previously was engaged to 14 protect. So it's broader than just the same or 15 substantially related matter, rule, correct? 16 A Right. And the distinction that I was trying 17 to explain a moment ago is the lawyer doesn't even need 18 to have a client. If the lawyer has a client, the 19 lawyer has been engaged by someone in a matter that is 20 the same or substantially related to the prior 21 engagement. That would be virtually every situation. 22 But one could imagine a situation in which the lawyer 23 doesn't even have a client but is acting in a way that 24 is hostile to the interest it previously was engaged to 25 protect or advance.</p> <p>Page 64</p>
<p>1 A Well, as this -- as this quote says, hostile to 2 the interest the lawyer previously was engaged to 3 protect. That I view as just being the, kind of, 4 umbrella statement that probably includes every matter 5 in which the lawyer is engaged in the same or 6 substantially related matter, but I think one difference 7 might be if the lawyer doesn't even have a lawyer-client 8 relationship is not acting as a lawyer but is acting in 9 some other way that is hostile to the interest that the 10 lawyer previously was engaged to protect or advance. 11 Q All right. Let's -- let's -- 12 A You're trying to -- you're looking at an 13 analytical distinction that I don't think has any 14 application here. I think it's sufficient to say same 15 or substantially related, and -- but -- but the summary 16 that this court used in that final phrasing tells us 17 that you don't have to -- I'm sorry. That the law firm 18 doesn't have to have a client in the same or 19 substantially related matter. It's broader than that. 20 Q And I understand that's what you're saying, and 21 that's what I'm trying to flush out, Mr. Kehr. I'm 22 under no illusion that I'm going to convince you to be 23 on my side on this. All right? But my question is -- 24 I'm trying to define, for the sake of the record, the 25 interests that you were saying were violated, right?</p> <p>Page 63</p>	<p>1 Q Okay. 2 A So I -- I just -- I don't think that last 3 sentence really adds anything in this situation because 4 Wick Phillips does have a client. It is engaged by that 5 client. And the question is whether the engagement is 6 adverse to the former client with regard to the subject 7 of the former representation. 8 Q What -- and you know what? I don't know that I 9 disagree with you, Mr. Kehr, because I think you're 10 going to agree with me that our position is going to be 11 our previous representation is not the same or a 12 substantially related matter. And the reason I'm asking 13 you these questions is not to pick on you, but to say if 14 the court says, you know what, Wick Phillips' previous 15 representation was not the same or substantially related 16 matter. Is it going to be your opinion that we still 17 violated rule 109? 18 A The answer is yes. 19 Q And I'm asking you why? 20 A Well, this gets into a whole other element of 21 my analysis. What Wick Phillips has been attempting to 22 do is to -- to use a word that popped up in one of the 23 depositions. It's attempting to silo it's 24 representation. The silo concept was that it was 25 involved in the drafting and in providing legal advice</p> <p>Page 65</p>

<p>1 with regard to the Bridge Loan. It was not involved in 2 the drafting or providing advice with regard to the -- 3 the LLC agreement in which the ownership interests were 4 stated. And -- and, therefore, they are separate 5 matters, and my view is that they are not separate 6 matters. 7 They're part of a single transaction. The 8 single transaction included probably many dozens of 9 individual instruments, and they all existed for the 10 single purpose of acquiring 20 or 30, whatever the 11 number was, pieces of real property. The Bridge Loan 12 existed because, at least initially, Highland Capital's 13 credit was needed for the banks to make the loan, and 14 without that loan, the acquisition couldn't have taken 15 place. The -- the LLC agreement -- the multi -- 16 multifamily -- SE Multifamily, whatever the name of it 17 is, LLC, agreement wouldn't have existed but for the 18 need for Highland's credit. The Bridge Loan wouldn't 19 have existed except for the other agreements. All of 20 them are part of a single transaction, and I don't think 21 that any of the law firms involved in the circumstances 22 are in a position to be adverse to any of the work that 23 they did previously. 24 So if there is a law firm, I don't know who it 25 was, that provided advice on income tax consequences, it Page 66</p>	<p>1 remember is the same or substantially related. 2 Q Okay. But if it's not the same transaction, 3 then your back up position would be, well, it's at least 4 substantially related, and therefore Wick Phillips is 5 disqualified under that ground, correct? 6 A That's correct. I view this -- if I may just 7 extend this a bit. I don't view the difference between 8 the same or substantially related as being meaningful. 9 The standard is the same. One doesn't have to conclude 10 it's the same as opposed to substantially related to 11 result -- I'm sorry. To reach the same result. My own 12 analysis is it's the same transaction. 13 Q I understand. And I think you've been very 14 clear, Mr. Kehr, and I'm -- again, I'm not here to 15 convince you otherwise, but I am here to test what 16 your -- what your opinions are. You understand that, 17 right? 18 A Of course. 19 Q Okay. So I think coming from our same line, if 20 the court finds that this was not the same or 21 substantially related, then your opinion fails and it's 22 not a violation of 109, correct? 23 A Well, no. You still have the concept of 24 hostile to the interests. 25 Q Okay. And that's where -- I'm trying to make Page 68</p>
<p>1 is not in the position, assuming that it's a former 2 client situation rather than a current client situation, 3 I should make that assumption with all of my explanation 4 here. So if there is a law firm that provided advice to 5 this overall transaction to any of the clients, to any 6 client whether it was Highland or any of the other 7 participants, or provided advice with regard to 8 hazardous material issues with regard to any of the 9 properties, or provided advice on any other topic that 10 was part of the overall package, that law firm cannot 11 now be adverse to the former client with regard to this 12 transaction. 13 Q Right. Doesn't that conclusion require the 14 fundamental premiss that this was a single integrated 15 transaction? 16 A Yes. 17 Q Okay. So, again, hypothetical, if the court 18 finds this was not a single integrated transaction then 19 your theory fails, correct? 20 A I agree with that. I view it -- 21 Q Okay. 22 A -- It -- it's the same transactions. Then the 23 back up question is whether it's substantially related. 24 I view it as being a single transaction but the -- the 25 rule in Texas and everywhere else so far as I can Page 67</p>	<p>1 that distinction. I'm trying to see how far you're 2 going to go, right? And so if it's not the same or 3 substantially related, then you've got this back up, 4 kind of, catch all of hostile to the former client 5 inimical to the interest standard, right? 6 A Right. Part of that whether you look at it as 7 the same transaction or substantially related or just 8 other hostility is the concept that a lawyer cannot seek 9 to undercut the -- the validity of the work that the 10 lawyer previously did for the client. That's part of 11 the duty of loyalty. It's not the entire duty of 12 loyalty, but it's one prong of the duty of loyalty so -- 13 Q I understand what you're saying, Mr. Kehr, but 14 that's kind of -- that's my question. I've got a couple 15 questions about this. The first thing -- well, let me 16 back it up. You said you were quoting a case here. 17 What case are you quoting as to this standard? 18 A I think that -- that language -- the -- that 19 long sentence comes from a 19th Century case called, In 20 Re Boone. 21 Q Can you spell that please? 22 A B-O-O-N-E. 23 Q All right. And what jurisdiction is that Boone 24 case from? 25 A It's a -- it's a federal case that preexisted Page 69</p>



<p>1 the current Courts of Appeal. The current -- what is 2 it? 11 circuits of Courts of Appeal. It's before the 3 federal courts were aligned that way. 4 (Simultaneous speakers) 5 Q I understand. That wasn't my question. You 6 said it was a 19th Century case meaning that it was an 7 1800's case? 8 A Correct. 9 Q Okay. And do you know what court issued the 10 opinion that you're quoting here for this standard? 11 A It is what was then called the Circuit Court 12 for Northern District of California and the site is 83 13 Fed 944. 14 Q So 83 Fed meaning the first version of the 15 federal reporter and we're now on -- 16 A Correct. 17 Q -- I think the fourth version, right? 18 A That's right. 19 Q All right. So it was a long time ago. You 20 agree with me on that, right? 21 A I do. 22 Q Okay. And it was from California and not from 23 Texas, correct? 24 A It was from a federal court in California. 25 Yes. And it cites other older cases.</p> <p style="text-align: right;">Page 70</p>	<p>1 your opinions to me, and you would agree, it's a broader 2 duty than just the same or substantially similar 3 transaction, correct? 4 A Well, I just don't see any -- the difference 5 you're trying to draw I can't live with. There -- these 6 are all the same concept -- 7 Q Well, let me ask you -- 8 A -- And the concept is whether you look at it as 9 the same or substantially related, the loyalty concept 10 is that the lawyer cannot attack the matter on which he 11 previously was engaged by former client, and sometimes 12 that's phrased as attacking the lawyers own work. 13 Sometimes under the specific facts of a -- of an 14 opinion, that comes into play, but it's a more 15 generalized concept. 16 Q I understand that, Mr. Kehr. Five minutes ago 17 you told me that the second dependent clause in that 18 quote was broader than the same or substantially related 19 matter concept. Do you remember that? 20 A I do. But you're -- you're missing the reason 21 for the distinction. The reason for the distinction is 22 that one can imagine situations in which the lawyer or 23 law firm doesn't even have a client. So it's -- it's 24 not -- in a representation, the question is -- is it the 25 same or substantially related, but one could imagine</p> <p style="text-align: right;">Page 72</p>
<p>1 Q I understand. Can you tell me the year that 2 was issued? 3 A 1897. 4 Q All right. So Texas was admitted as a state of 5 the Union, and, in fact, by then had succeeded and come 6 back after the Civil War, correct? 7 A Yes. 8 Q All right. Is there a reason you're using a 9 standard for disqualification from an 1897 case out of 10 California Federal Court rather than using, for 11 instance, a Texas Supreme Court case from somewhere 12 closer to the 22nd Century? 21st -- 21st Century. 13 Yeah. We're in the 21st. 14 A I won't tell anyone you don't know what century 15 it is. 16 Q You know, I went to law school because I can't 17 count. 18 A It will be our secret. There are lots of Texas 19 authorities. I happen to like the rather poetic 20 phrasing of In Re Boone, but I can -- one well-known 21 Texas authority was cited by the Pachulski firm in its 22 original brief. It's the American Airlines case. 23 You'll find language in that. 24 Q Well -- but this language that you've quoted -- 25 or I'm sorry. That Mr. Brown quoted in the summary of</p> <p style="text-align: right;">Page 71</p>	<p>1 non-representative situations in which a lawyer is 2 attacking work previously done for a former client, and 3 as I said before, it's going to be extremely rare, but I 4 think that the generalized statement and the In Re Boone 5 decision captures that broader concept. 6 In our situation, you don't have to go beyond 7 that because your law firm does have a client, and it's 8 possible to analyze whether the current representation 9 on the creditor's claim is in the same or substantially 10 related matter to the prior representation. 11 Q I understand that, Mr. Kehr, but it goes back 12 to a question I asked you previously. If the court 13 finds it was not the same or substantially related 14 matter, you're still going to say that we're 15 disqualified. So it would have to be under this second 16 text, correct? 17 A I'm not going to say you're disqualified. 18 That's a judicial decision. What I'm going to say is 19 that the same duty of loyalty issue arises without 20 regard to how one categorizes it. What -- what exists 21 in my view is that your law firm is acting in a way that 22 is adverse to its former client with regard to the 23 subject of the former representation. 24 Q And if it's not the subject of the former 25 representation, it's going to be your position there is</p> <p style="text-align: right;">Page 73</p>

<p>1 still a violation of rule 109 because we were taking a 2 position hostile to the former client and one inimical 3 to the interests that we were previously engaged to 4 protect, correct? 5 A Well, I'm not certain I can go quite that far 6 because it -- it -- it -- there is a representation. 7 You know, again, I've said this I guess twice before. 8 But I view the broader statement as being a fair summary 9 of the narrower statement, but it does include that, you 10 know, unusual situation, highly unusual situation, in 11 which there is no current representation. 12 Q Does the broader statement, the second part of 13 this, the -- the lawyer cannot assume a position hostile 14 to the former client and one inimical to the interests 15 that the lawyer was previously engaged to protect, that 16 doesn't appear in rule 109, correct? 17 A That's correct. 18 Q It appears in In Re Boone from 1897, correct? 19 A Well, I think it -- it exists in other places 20 too. 21 MR. MARTIN: Objection. Nonresponsive. 22 A It exists in the American Airlines case. 23 Q Those words exist in the American Airlines 24 case? 25 A Not those words. That concept. And there are</p> <p style="text-align: right;">Page 74</p>	<p>1 the opposition -- 2 MR. MARTIN: I understand. 3 MR. BROWN: -- Of Wick Phillips. But just for 4 clarity. 5 MR. MARTIN: And, Mr. Brown, I'll stipulate I 6 saw that email. I'm not disputing that those were also 7 part of the documents he reviewed. That's not what I'm 8 going to ask him about, but thank you for the 9 clarification. Mr. Kehr, do you have Exhibit 3 up in 10 front of you? 11 A I do. 12 Q Can you identify where Exhibit 3 lists In Re 13 Boone from 1897? 14 A I didn't understand that that was the purpose 15 of this list. This list documents. It doesn't list 16 cases or advisory ethics opinions. 17 Q I was going to ask you that next. It doesn't 18 list American Airlines case. It doesn't list the ethics 19 opinions, correct? 20 A I think that's correct. 21 Q All right. So if I was going to test your 22 interpretation of these cases and test your 23 interpretation of the opinions, I don't have the 24 opportunity to do that because I don't know what you've 25 looked at, right?</p> <p style="text-align: right;">Page 76</p>
<p>1 a number of other cases. There is a Texas advisory 2 ethics opinion that has the broader concept. 3 Q Okay. Mr. Kehr, I was going to ask you about 4 this in a little while, but I noticed in the 5 documents -- well, first of all, Madam Court Reporter, 6 do we have Exhibit 1 marked? 7 THE REPORTER: Yes. 8 (Exhibit No. 3 was marked for identification.) 9 Q Okay. I'm going to come back to that. Let's 10 go to Exhibit 3 real quick. Mr. Kehr, Exhibit 3 is a 11 list that was provided to us by Mr. Brown of the 12 documents that were considered by you in connection with 13 this Motion to Disqualify. Do you see that? 14 A I do. I have it on my -- my screen on my 15 computer here. 16 Q Perfect. Have you seen this document before? 17 A I think I saw it for the first time yesterday. 18 MR. BROWN: Grant, excuse me for just a minute. 19 I just wanted to add that we also sent Lauren a 20 letter -- I'm sorry. An email after we sent this that 21 added to this list with greater declaration and the 22 attached exhibits which was framed as an appendix and 23 was filed under seal as one additional document with the 24 attachments which Mr. Kehr considered, and it -- I mean, 25 it could be part of this list, because it was part of</p> <p style="text-align: right;">Page 75</p>	<p>1 A I -- I think that's a rhetorical question. 2 MR. BROWN: I'm going to object to this line of 3 questioning to the extent -- to the extent it applies 4 that there was an agreement to produce authorities. 5 That's not the case. We agreed to produce documents 6 that Mr. Kehr relied on. We did not agree in our 7 stipulation to produce authorities or to list 8 authorities. 9 MR. MARTIN: Mr. Brown -- Mr. Brown, is it your 10 position that under rule 26 you don't have to produce 11 everything he looked at in evaluating this and rendering 12 his opinions? 13 MR. BROWN: We agreed to produce documents not 14 authorities. 15 MR. MARTIN: And so you don't think you have 16 the obligation to produce the authorities; is that 17 correct? 18 MR. BROWN: That's correct. Neither party 19 produced any authorities. 20 MR. MARTIN: Objection. Okay. That's fine. 21 You're on the record. Anything else, Mr. Brown, before 22 I actually ask your witness a question? 23 Q Mr. Kehr, you would agree with me that courts 24 sometimes disagree about what cases say, correct? 25 A Yes.</p> <p style="text-align: right;">Page 77</p>

<p>1 Q And, in fact, even Supreme Court has majority 2 opinions and sense that can disagree about specific 3 provisions that a case might turn on, correct? 4 A Correct. 5 Q So if you and I were looking at the same 6 advisory opinions, you and I might have a different 7 interpretation of those advisory opinions, correct? 8 A Agreed. 9 Q And you and I might have a different opinion 10 about what the American Airlines case says, correct? 11 A Of course. 12 Q You and I might have a different opinion as to 13 the affect of In Re Boone from 1897 has on rule 109 of 14 the Texas rules, correct? 15 A Yes. 16 Q So it's difficult for me to question you about 17 your assumptions without knowing what you looked at. 18 You agree with that, right? 19 A I think, again, this is a rhetorical question. 20 I don't want to get involved in your debate with 21 Mr. Brown about whether either of the parties violated 22 some agreement between them. It's -- 23 (Simultaneous speakers) 24 Q I'm not asking you for that. Mr. Kehr, I 25 appreciate that, but I'm not asking you for that. I'm</p> <p style="text-align: right;">Page 78</p>	<p>1 cases or advisory opinions you looked at in reaching 2 your conclusions here today? 3 A I -- I couldn't possibly. I could read cases 4 and advisory ethics opinions and participated in writing 5 advisory ethics opinions for 40 years. Probably 6 slightly more than 40 years. So, I mean, the -- the 7 whole body of the -- roughly the 40 or so years that 8 I've been involved in the field of professional 9 responsibility, all of the work that I did on the two 10 commissions that wrote the California rules, all of that 11 comes into play. 12 When Mr. Brown ultimately files his brief, 13 there will be some sampling of particular opinions that 14 he's going to view important for the courts 15 understanding, but my opinion is based on 40 years of 16 experience in the field. 17 MR. MARTIN: Okay. I'm going to object as 18 nonresponsive. 19 Q Mr. Kehr, can you identify which authorities 20 you consulted in reaching your opinions in this case in 21 the last three months? 22 A I couldn't give you a complete answer. 23 Q Could you give me a partial answer other than 24 In Re Boone and the American Airlines case? 25 A Yes. I recall looking at the restatement third</p> <p style="text-align: right;">Page 80</p>
<p>1 asking you whether or not I can test your opinions about 2 what a Texas case does or does not say if I don't know 3 what you looked at. I can't, right? 4 A I don't agree with that. You can test my 5 opinion. I will tell you the reason I think what I 6 think, and you can find out everything you need to know 7 about what my analytical process is. Whether a 8 particular opinion supports or contradicts my opinion is 9 something for you and Mr. Brown to work out in your 10 filings that I understand are due in a couple of weeks. 11 But I'm not going to have a debate with you here about 12 what particular cases say. I would -- would be totally 13 incapable of doing that except by written materials. I 14 can't do that spontaneously. What I can do is explain 15 what my thought process is. 16 Q I understand that and you testified earlier 17 that you consider yourself an expert on the Texas rules. 18 You remember that? 19 A I do. 20 [Zoom audio interference] 21 Q [inaudible] -- On disciplinary rules is 22 interpreting cases and interpreting advisory opinions, 23 correct? 24 A Yes. 25 Q Can you identify as we sit here today what</p> <p style="text-align: right;">Page 79</p>	<p>1 of the law governing lawyers. I remember that offhand. 2 I recall the Texas advisory ethics opinion that I 3 mentioned a moment ago. 4 Q Do you remember which one that was? 5 A No. I don't remember the number. 6 Q Do you remember what it was about? 7 A I only remember that it is one of the sources 8 that talks about the lawyer and I'm going to -- these 9 are not the words of the opinion, but -- but a 10 paraphrase of the concept seeking to undo the lawyers 11 own work or attacking the lawyers own prior work. 12 Q What else? 13 A A fairly -- fairly common concern that pops up 14 around the country, and it's come up in any number of 15 cases and advisory ethics opinions. 16 Q What else did you look at? 17 A I can't tell you. 18 Q Okay. So as we sit here today, you've 19 identified everything that you can remember that you 20 looked at in interpreting the Texas rules to reach the 21 opinions you have in this case, correct? 22 A Yes. 23 Q All right. So I'm going to move on to 24 something else. Part of your opinions revolve around 25 this concept of -- that this was a single integrated</p> <p style="text-align: right;">Page 81</p>



<p>1 transaction, correct?</p> <p>2 A Yes.</p> <p>3 Q All right. Now, I don't need to get into</p> <p>4 another semantic discussion with you unless you find it</p> <p>5 necessary after hearing my questions. But in my opinion</p> <p>6 or in my mind, there is a difference between a single</p> <p>7 integrated transaction and different representations of</p> <p>8 a lawyer. Do you agree or disagree with that statement?</p> <p>9 A I agree.</p> <p>10 Q So you could have a single integrated</p> <p>11 transaction and have different lawyers representing a</p> <p>12 client in different parts of a single integrated</p> <p>13 transaction, correct?</p> <p>14 A I agree with that. Different lawyers in a</p> <p>15 single law firm or different lawyers in different law</p> <p>16 firms?</p> <p>17 Q So, for example, if you had a law firm that the</p> <p>18 client loves for whatever reason to do their finance</p> <p>19 work.</p> <p>20 A Excuse me. But I missed one word in your</p> <p>21 question. Could you start it over again please?</p> <p>22 Q Absolutely. I'm just giving you an example.</p> <p>23 And one example I might have is that a client loves to</p> <p>24 use certain -- certain law firm for their finance work</p> <p>25 but doesn't use that lawyer for their intellectual</p> <p style="text-align: right;">Page 82</p>	<p>1 that rule 109 was still violated because the entirety of</p> <p>2 it was a single integrated transaction or no?</p> <p>3 A Well, because it's a single integrated</p> <p>4 transaction and what your firm is doing is attacking the</p> <p>5 effectiveness or validity of work it did before. What</p> <p>6 you're -- what you're doing in my opinion is mixing the</p> <p>7 concept of scope of representation, which is extremely</p> <p>8 important, with the loyalty issue which is not limited</p> <p>9 to the particular legal issues on which the lawyer</p> <p>10 previously advised the client. The scope of</p> <p>11 representation is essential for -- primarily for</p> <p>12 malpractice purposes. Let's -- let's --</p> <p>13 (Simultaneous speakers)</p> <p>14 Q Go ahead. I'm sorry.</p> <p>15 A Yeah. Let's just say to simplify the</p> <p>16 discussion that there were ten law firms involved in</p> <p>17 the -- what was it called? The unicorn transaction?</p> <p>18 Q Project Unicorn.</p> <p>19 A Yeah. And that one of them provided advice</p> <p>20 about title insurance on properties that were being</p> <p>21 acquired. And let's assume that the other nine law</p> <p>22 firms provided no advice on that subject and that a --</p> <p>23 that whomever or whichever their client was, didn't rely</p> <p>24 on any of those other nine law firms to provide advice</p> <p>25 on title insurance questions.</p> <p style="text-align: right;">Page 84</p>
<p>1 property work, correct?</p> <p>2 A Yes.</p> <p>3 Q And so those lawyers perhaps in a single</p> <p>4 transaction might have different representations. Their</p> <p>5 scope of representation would be different, correct?</p> <p>6 A Correct.</p> <p>7 Q And so, for example, if the lawyer -- if the</p> <p>8 law firm doing the finance work doesn't have the</p> <p>9 capability to do intellectual property work, then that</p> <p>10 representation by definition would not involve</p> <p>11 intellectual property, correct?</p> <p>12 A Correct.</p> <p>13 Q Now, I don't think I'm previewing anything that</p> <p>14 anybody doesn't already know. You understand that my</p> <p>15 firm is taking a position that we represented,</p> <p>16 regardless of -- we'll get into it, who was represented,</p> <p>17 but the representation of my firm was limited to the</p> <p>18 loan agreement, right?</p> <p>19 A Yes.</p> <p>20 Q And you understand that that's our position,</p> <p>21 correct?</p> <p>22 A I do.</p> <p>23 Q So if that is the case and the court finds that</p> <p>24 we represented whoever you're talking about just for the</p> <p>25 purposes of the loan transaction, it is your opinion</p> <p style="text-align: right;">Page 83</p>	<p>1 If there was malpractice on the title</p> <p>2 insurance, then it's only that one law firm that</p> <p>3 provided that advice that would be in jeopardy. That's</p> <p>4 the scope of representation, and it's essential for</p> <p>5 lawyers to carefully define the scope of representation</p> <p>6 so that the client can not reasonably rely on the lawyer</p> <p>7 to provide advice or representation with regard to any</p> <p>8 other topic.</p> <p>9 And as you said in your question, a lawyer</p> <p>10 might not be competent to provide advice on some other</p> <p>11 issue. The finance lawyer might not know anything about</p> <p>12 IP issues or might know nothing about title insurance or</p> <p>13 might know nothing about Delaware trusts or any number</p> <p>14 of other issues that were involved in Project Unicorn.</p> <p>15 And the prudent lawyer will also always carefully limit</p> <p>16 the scope so there is no reasonable reliance, and there</p> <p>17 is no potential risk and so that the client is protected</p> <p>18 and will know who to look to, who to communicate with,</p> <p>19 and so on.</p> <p>20 I view the loyalty issue as being a completely</p> <p>21 unrelated analysis. The question is whether the lawyer</p> <p>22 is acting in a way that's hostile to the former</p> <p>23 representation.</p> <p>24 Q Okay.</p> <p>25 A Either the lawyers work in it or in some other</p> <p style="text-align: right;">Page 85</p>

<p>1 fashion --</p> <p>2 (Simultaneous speakers)</p> <p>3 Q But, Mr. Kehr, I think you're getting to the</p> <p>4 heart of the matter --</p> <p>5 MR. BROWN: Excuse me. Can you let the witness</p> <p>6 finish answering before you interrupt?</p> <p>7 MR. MARTIN: I didn't mean to interrupt him. I</p> <p>8 apologize. I --</p> <p>9 MR. BROWN: He wasn't finished.</p> <p>10 (Simultaneous speakers)</p> <p>11 MR. BROWN: Go ahead and finish, Mr. Kehr.</p> <p>12 A I -- actually, I thought I was, but please --</p> <p>13 please go ahead, Mr. Martin.</p> <p>14 Q Thank you, Mr. Kehr, and, again, my apologies</p> <p>15 if you believe that I interrupted you. I didn't think I</p> <p>16 did either. So in your -- let's use your hypothetical</p> <p>17 for a second so we're talking apples to apples. In your</p> <p>18 hypothetical involving this title company that -- that</p> <p>19 committed alleged malpractice, right? You're saying the</p> <p>20 title -- that the law firm that did the title work was</p> <p>21 in jeopardy, right?</p> <p>22 A Yes.</p> <p>23 Q In your hypothetical, would any of those other</p> <p>24 nine firms be able to take some action to try to undo</p> <p>25 that title -- the work that that law firm did regarding</p> <p style="text-align: right;">Page 86</p>	<p>1 each of the other jurisdictions. What your -- while</p> <p>2 you're thinking about that, can we take our second</p> <p>3 break? I need to run down the hall.</p> <p>4 Q Sure. Let me ask one quick follow-up question</p> <p>5 --</p> <p>6 A Of course.</p> <p>7 Q -- Because I have to object to that last</p> <p>8 response as nonresponsive. Because what I asked you was</p> <p>9 it is your testimony that those nine firms taking an</p> <p>10 action to undo whatever the title law firm did wrong</p> <p>11 that that is a violation of Texas Rule 1.09?</p> <p>12 A Well, that's only if the Texas rules are</p> <p>13 applicable. You might have a law firm that's in</p> <p>14 Illinois or Massachusetts or somebody else -- somewhere</p> <p>15 else --</p> <p>16 Q I'm asking --</p> <p>17 A -- That's involved in a transaction in some</p> <p>18 other jurisdiction.</p> <p>19 Q Yes, sir. I'm asking under Texas rules. It's</p> <p>20 your opinion that that scenario you painted is violative</p> <p>21 of Texas Rule 1.09 if Texas rule 1.09 applies, correct?</p> <p>22 A Correct.</p> <p>23 Q All right. Let's take a break.</p> <p>24 A Thank you.</p> <p>25 (Recess from 12:34 p.m. to 12:43 p.m.)</p> <p style="text-align: right;">Page 88</p>
<p>1 title?</p> <p>2 A No.</p> <p>3 Q And why is that? Because it's the same</p> <p>4 transaction?</p> <p>5 A Correct.</p> <p>6 Q Okay. So your view is because those ten firms</p> <p>7 worked on that transaction, all ten of those firms are</p> <p>8 barred by the -- by the duty of loyalty from attacking</p> <p>9 any parts of that transaction, correct?</p> <p>10 A Correct. Without client consent.</p> <p>11 Q I understand. And so -- and it's your view</p> <p>12 that if one of those other nine firms took any other</p> <p>13 action to try to undo that part of the transaction that</p> <p>14 that would be a breach of their duty of loyalty,</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q And you believe that that standard that you're</p> <p>18 testifying to is the standards that are required under</p> <p>19 Texas Rule 1.09, correct?</p> <p>20 A I think the answer would be the same whether we</p> <p>21 were looking at the Illinois rules or the New York rules</p> <p>22 or the California rules because all the phrasings are</p> <p>23 slightly different. Texas does have a unique twist on</p> <p>24 the phrasing of it's 109. The underlying concepts are</p> <p>25 the same and will be found in the equivalent rule in</p> <p style="text-align: right;">Page 87</p>	<p>1 Q All right. Mr. Kehr, we took a short break.</p> <p>2 You understand you're still under oath?</p> <p>3 A I do.</p> <p>4 Q Did you communicate with anyone during the</p> <p>5 break including Mr. Brown?</p> <p>6 A No.</p> <p>7 Q Excellent. All right. I want to go back to</p> <p>8 what we've marked as Exhibit 1 which is the summary of</p> <p>9 your opinions.</p> <p>10 A Give me one moment to get it back up on my</p> <p>11 screen.</p> <p>12 Q Take your time.</p> <p>13 A Got it. Go ahead.</p> <p>14 Q All right. I want to go to the second bullet</p> <p>15 point. I'm sorry. I apologize. The third bullet point</p> <p>16 right at the bottom of page three where it states, "Wick</p> <p>17 Phillips attempt to distinguish it's work for HCRE and</p> <p>18 Highland in the negotiation and drafting of the loan</p> <p>19 agreement from the work allegedly done by other lawyers</p> <p>20 and law firms in connection with drafting the LLC</p> <p>21 agreement is not supported by well-settled ethical</p> <p>22 standards or the Texas Disciplinary Rules of</p> <p>23 Professional Conduct." Did I read that correctly?</p> <p>24 A You did.</p> <p>25 Q What did you rely on in reaching that opinion</p> <p style="text-align: right;">Page 89</p>

<p>1 other than what we've already discussed?</p> <p>2 A I don't think there is anything else. I think</p> <p>3 we've covered it.</p> <p>4 Q Okay. Can you explain to me -- well, and you</p> <p>5 didn't draft this summary. So what -- what I found</p> <p>6 interesting there was the use of the phrase,</p> <p>7 well-settled. Did you -- is that your phrase or</p> <p>8 Mr. Brown's phrase?</p> <p>9 A I don't know. But I do consider these concepts</p> <p>10 all to be well-settled.</p> <p>11 Q And you considered these concepts well-settled</p> <p>12 based on the authorities that you've discussed, correct?</p> <p>13 A Yes. I think that these are national standards</p> <p>14 that prohibits a lawyer from being adverse to the former</p> <p>15 client as we've discussed.</p> <p>16 Q Right. And that includes the quote up above in</p> <p>17 the first bullet point that you identified came from the</p> <p>18 In Re Brown [sic] case, correct?</p> <p>19 A Yes.</p> <p>20 Q All right. Let me ask you another</p> <p>21 hypothetical. If the court finds that that second</p> <p>22 dependent clause from In Re Brown [sic] doesn't apply to</p> <p>23 Texas Rule 109 then your opinion failed, correct?</p> <p>24 A No. I don't think so unless I misunderstand</p> <p>25 what you're pointing at, because you still have the same</p> <p style="text-align: right;">Page 90</p>	<p>1 attorney general. I think it's from an ethics</p> <p>2 committee, but there is also other Texas authority.</p> <p>3 Q And which are those?</p> <p>4 A I -- I can't tell you offhand.</p> <p>5 Q Okay. And those aren't listed in the -- what</p> <p>6 you reviewed, correct?</p> <p>7 A In -- in that disclosure we talked about</p> <p>8 before?</p> <p>9 Q Yes.</p> <p>10 A No. That's a document disclosure not an</p> <p>11 authority disclose.</p> <p>12 Q I understand that. At no point have you</p> <p>13 provided us the list of authorities you relied on in</p> <p>14 reaching your opinions, correct?</p> <p>15 A That's correct.</p> <p>16 Q All right. Thank you. Let's now go to the</p> <p>17 next bullet point on the next page. You state, "The</p> <p>18 drafting of the LLC agreement, the 2018 joint</p> <p>19 investment, the various steps needed to effect their</p> <p>20 terms, and the drafting and the negotiation of the loan</p> <p>21 agreement, and the various steps required to effect it's</p> <p>22 terms including with respect to the preparation of</p> <p>23 multiple separate documents, schedules, and exhibits</p> <p>24 attached to the loan agreement comprise a single</p> <p>25 integrated transaction. The subject of which was the</p> <p style="text-align: right;">Page 92</p>
<p>1 or substantially related matter.</p> <p>2 Q That's a fair point. So let me give you a</p> <p>3 different hypothetical. Let's say that the court finds</p> <p>4 that the representation of Wick Phillips was not in the</p> <p>5 same or substantially related matter and finds that the</p> <p>6 second part of that last sentence is not settled while</p> <p>7 under Texas Rule 109, then your opinion fails, correct?</p> <p>8 A Well, you still have the question of whether</p> <p>9 what your firm is doing is attacking the work that it</p> <p>10 previously did. Now, I -- I -- you're -- you're</p> <p>11 attempting to create narrow distinctions here that I</p> <p>12 don't see. I view all of these concepts of being</p> <p>13 essentially the same loyalty duty to the former client,</p> <p>14 but there still is authority, including Texas authority,</p> <p>15 for the concept that a lawyer cannot attack the prior</p> <p>16 work. The prior work included on the allocation --</p> <p>17 representing the allocation to the lender and all of</p> <p>18 that, and so there is still be that basis on which a</p> <p>19 court might determine that disqualification would be</p> <p>20 appropriate.</p> <p>21 Q And the Texas authority you're relying on there</p> <p>22 is the American Airlines case and the advisory opinion</p> <p>23 for the attorney general that you identified earlier,</p> <p>24 correct?</p> <p>25 A I think the advisory opinion is not from the</p> <p style="text-align: right;">Page 91</p>	<p>1 acquisition of the mortgaged properties and the</p> <p>2 portfolio properties as defined in the loan agreement."</p> <p>3 Did I read that correctly?</p> <p>4 A Yes.</p> <p>5 Q So if I was to summarize your previous</p> <p>6 testimony, that bullet point addresses your concept that</p> <p>7 because all of this was a single transaction, that</p> <p>8 anybody that was involved in any step of this would be</p> <p>9 disqualified from attacking any part of the transaction;</p> <p>10 is that correct?</p> <p>11 A Well, any -- any lawyer or law firm.</p> <p>12 Q Yeah.</p> <p>13 A Yeah.</p> <p>14 Q That's what I meant.</p> <p>15 A Yes.</p> <p>16 Q All right.</p> <p>17 A I agree with that.</p> <p>18 Q And you believe that that is called for and</p> <p>19 required under Texas Rule 109, correct?</p> <p>20 A I do.</p> <p>21 Q All right. And you have reached that opinion</p> <p>22 regardless of whether or not the scope of representation</p> <p>23 of any individual law firm was limited, correct?</p> <p>24 A Well, I would say I'd assume that the</p> <p>25 representation of individual law firms was limited. I</p> <p style="text-align: right;">Page 93</p>

<p>1 would say that's -- that's a fundamental assumption that 2 I'm making, and I'm prepared to assume that Highland did 3 not actually or reasonably rely on your firm for legal 4 advice or representation with regard to the drafting or 5 the negotiation of the LLC agreement. 6 Q Right. And actually that's a great point. I 7 wanted to get back to that. You mentioned it earlier, 8 and we didn't flush it out. You agree with me that 9 there is evidence in this case that Wick Phillips was 10 not involved in the negotiation drafting of the LLC 11 agreement, correct? 12 A Yes. 13 Q Do you have any evidence or anything to suggest 14 that Wick Phillips did, in fact, negotiate or draft the 15 LLC agreement? 16 A No. 17 Q And, in fact, there is evidence in this case 18 that another law firm and in-house lawyers from the 19 clients were the ones that actually negotiated and 20 drafted the LLC agreement, correct? 21 A Yes. 22 Q And your opinion that we are disqualified is 23 based on the fact that if we touched -- in laymen's 24 terms, if we touched any part of this transaction then 25 we can't attack any other part of the transaction,</p> <p style="text-align: right;">Page 94</p>	<p>1 connection was closer because it did. 2 Q In connection with the original loan documents, 3 right? 4 A Yes. 5 Q And that's when the first LLC agreement was in 6 effect, correct? 7 A At least then, yes. I'm not certain what your 8 firm did when the new investor came in. 9 Q Do you have any evidence that my firm was 10 involved in the allocations aspect of it after the 11 amended LLC agreement was entered into? 12 A I don't recall whether I've seen anything on 13 that, but I'm certainly prepared to assume that it did 14 not. 15 Q All right. So it's your testimony that even 16 assuming my firm did not touch the allocation issue 17 after the amended LLC agreement was entered into, that 18 our firm would still be disqualified because of it's 19 work on the original loan agreement, correct? 20 A Correct. 21 (Exhibit No. 2 was marked for identification.) 22 Q All right. Let's do Exhibit 2. Mr. Kehr, just 23 a couple of questions. This is your engagement 24 agreement with -- 25 A Give me just one second to open it on my screen</p> <p style="text-align: right;">Page 96</p>
<p>1 right? 2 A Well, in part that's correct although you have 3 to keep in mind that the part that your firm did handle, 4 I think unquestionably handled, does involve the 5 allocation of ownership interests. You prepared 6 documents that made those representations and 7 representations and warranties to the lenders. So you 8 did touch the allocation even if you didn't advise about 9 the allocation, it was among the things that you did. 10 So there were written representations and warranties by 11 the borrowers, plural, regarding that allocation. 12 Q Have you seen a notice that Wick Phillips 13 touched the allocations after the amended LLC agreement 14 was done? 15 A I mean, only that it was in the Bridge Loan. 16 So there would be a distinction between what your firm 17 did and our hypothetical firm that advised on title 18 insurance -- I'm sorry. Title issues. Not title 19 insurance but title issues with regard to one of the 20 20 or 30 properties. 21 Q I -- I -- 22 A -- That -- that law firm that looked at a title 23 report wouldn't have seen -- wouldn't have known about 24 and wouldn't have drafted a piece of paper that talked 25 about the allocation of ownership interests. Your firms</p> <p style="text-align: right;">Page 95</p>	<p>1 so I can see all of it. 2 Q Take your time. 3 A Yes. That is my engagement agreement. 4 Q Right. And that's -- the addressee of that is 5 Mr. Seery, the CEO of Highland Capital Management, 6 correct? 7 A Correct. 8 Q And looking at this letter in the second 9 paragraph it states that your time is billed at \$775 per 10 hour; is that correct? 11 A Yes. 12 Q And Ms. Cohen, who I think you identified 13 earlier. Her time would be billed at \$575 per hour; is 14 that correct? 15 A Yes. Correct. 16 Q Has anyone else worked on this besides you and 17 Ms. Cohen? 18 A Well, I'm not certain that she has, but nobody 19 else would have. 20 Q Fair enough. That answered my question. Thank 21 you. Is \$775 an hour your normal billing rate? 22 A I don't really have a normal billing rate, but 23 it's in the range of what I am charging for expert 24 witness consultation and testimony. 25 Q And that's my question. Do you -- you charge a</p> <p style="text-align: right;">Page 97</p>

<p>1 higher rate for expert witness work than in your normal  2 representation of clients providing legal services,  3 correct?  4 A Yes.  5 Q And what's your normal rate for providing legal  6 services to clients?  7 A It would be \$100 or more lower except with some  8 longterm clients who are billed at -- I think the lowest  9 rate for -- I've got some clients. One client in  10 particular I've had since about 1986, and I charge that  11 company I believe at 550.  12 Q So your rates are higher for expert work,  13 right?  14 A They are.  15 Q Let's go to -- Madam Court Reporter, I just  16 want to make sure as we go through this that I don't  17 miss anything. Can you please confirm that Exhibit 2  18 and 3 are marked as part of the record?  19 THE REPORTER: They are.  20 (Exhibit No. 4 was marked for identification.)  21 Q Thank you very much. Mr. Kehr, now I want to  22 go to Exhibit 4 which is a document that has now been  23 Bates labeled Highland underscore WPEP000014, and it  24 runs through Highland underscore WPEP000018.  25 A I have it open on my screen.</p> <p style="text-align: right;">Page 98</p>	<p>1 document when you received it?  2 A I remember being told in a phonecall that there  3 had been a release of Highland Capital Management, LP,  4 from the Bridge Loan obligation, and I recall that  5 Pachulski Stang didn't at first have the document  6 although they understood it existed, and there was some  7 delay in getting it to me. I don't recall them saying  8 anything else about it.  9 Q All right. Now -- all right. That document  10 doesn't relate to your opinions now in any way; is that  11 correct?  12 A Yes. That's correct.  13 (Exhibit No. 5 was marked for identification.)  14 Q All right. I want to go now to Exhibit 5, and  15 Madam Court Reporter, please mark Exhibit 4. Mr. Kehr,  16 I'm going to represent to you I'm not going to go  17 through the Bridge Loan agreement page by page. You're  18 welcome.  19 A Everyone thanks you for that.  20 Q But it is part of your opinion --  21 A I --  22 MR. BROWN: Brant, I think there may be some  23 self-interest involved there.  24 Q A little bit. A little bit. I've got a  25 volleyball and football game to get to later today, and</p> <p style="text-align: right;">Page 100</p>
<p>1 Q Thank you. I'm going to represent to you that  2 there was no Bates label in this -- on this document in  3 the production in the underlying adversary matter. So  4 how did you obtain this document?  5 A Either from Mr. Brown or from one of his  6 colleagues.  7 Q And you used this document as part of reaching  8 your opinions in this case?  9 A I think that's -- that's fair to say. I had to  10 think through the implications of this. So, yes, I  11 agree with you.  12 Q Which of your opinions, if any, does this  13 document support? Why is this document important to  14 your opinions?  15 A Well, I don't think it is. It's something I  16 had to think through. That doesn't support any of my  17 opinions. It doesn't undercut any of my opinions. It's  18 part of the -- it's part of the underlying factual  19 situation.  20 Q So does this -- I understand that you looked at  21 this document in reaching your opinions, but is it fair  22 to say that this document doesn't -- or it just has no  23 relevance whatsoever to your opinions?  24 A Yes.  25 Q Do you remember what you were told about that</p> <p style="text-align: right;">Page 99</p>	<p>1 I don't want to be here all night.  2 We've established that one of your opinions is  3 that the LLC agreement and the loan agreement and the --  4 and by -- let me -- hold on. Let me back up. You agree  5 with me that there is two LLC agreements involved in  6 this case, correct?  7 A You mean the original and the amendment?  8 Q Yes.  9 A Yeah. Okay.  10 Q All right. And as we go through these  11 questions, Mr. Kehr, I'm going to attempt to make a  12 distinction between the original LLC agreement and the  13 amended LLC agreement, and if I slip up and I don't make  14 that distinction or you think I'm missing something, I  15 want you to point it out to me. Okay?  16 A Yeah.  17 Q All right. But I think it's your opinion in  18 this case that between the original LLC agreement and  19 the loan agreement, in your opinion, those were  20 certainly, in your opinion, part of a single integrated  21 transaction, correct?  22 A Yes.  23 Q Is it your opinion that the subsequent amended  24 LLC agreement was also part of a single integrated  25 transaction?</p> <p style="text-align: right;">Page 101</p>



<p>1 A Yes.</p> <p>2 Q And that forms part of the basis of your</p> <p>3 opinions in this case, correct?</p> <p>4 A Well, I don't think it's -- it's significant</p> <p>5 for my view of your firms duties, but if -- if we were</p> <p>6 to imagine for a moment that a brand new law firm came</p> <p>7 in to represent one of the parties to the amendment,</p> <p>8 then that other law firm having had no involvement with</p> <p>9 the original LLC agreement or with the Bridge Loan</p> <p>10 agreement or with the many, many other underlying</p> <p>11 elements to the -- to Project Unicorn, would have the</p> <p>12 same loyalty obligation with regard to the entire</p> <p>13 package.</p> <p>14 Q Well, let's talk about that for a second.</p> <p>15 A Sure.</p> <p>16 Q If a new law firm came in to negotiate and</p> <p>17 draft the amended LLC agreement that Wick Phillips was</p> <p>18 involved in the original loan agreement, which was</p> <p>19 executed at the same time as the original LLC agreement,</p> <p>20 your positions -- I think I understand your position is</p> <p>21 that because Wick Phillips was involved in the original</p> <p>22 loan agreement which necessarily involved the original</p> <p>23 LLC agreement that at that point, at that snapshot in</p> <p>24 time, Wick Phillips is barred from representing</p> <p>25 interests against Highland later on no matter what,</p> <p>Page 102</p>	<p>1 least seven borrowers, correct?</p> <p>2 A Correct.</p> <p>3 Q And you agree with me that this loan agreement</p> <p>4 is dated September 26th, 2018, correct?</p> <p>5 A Dated as of September 26th, 2018, yes.</p> <p>6 Q All right. And Mr. Brown and I covered this</p> <p>7 earlier, but also part of the documents you reviewed</p> <p>8 even if they're not on Exhibit 3 is what we've been</p> <p>9 calling the appendix which included the unicorn purchase</p> <p>10 and sale agreements of the underlying assets, correct?</p> <p>11 A Yes.</p> <p>12 Q All right. So you saw the unicorn PSA's,</p> <p>13 correct?</p> <p>14 A I -- I didn't -- I don't think I really looked</p> <p>15 at them, but they were available to me, and I think the</p> <p>16 content of the individual purchase agreements was not</p> <p>17 relevant to my analysis.</p> <p>18 Q Tell me why that is.</p> <p>19 A What's relevant to my analysis is that Wick</p> <p>20 Phillips represented Highland with regard to the loan</p> <p>21 agreement that was a portion of Project Unicorn.</p> <p>22 (Simultaneous speakers)</p> <p>23 Q What's the -- sorry. Go ahead.</p> <p>24 A The other underlying elements of this such as</p> <p>25 the way in which the Delaware Statutory Trusts were</p> <p>Page 104</p>
<p>1 correct?</p> <p>2 A With regard to Project Unicorn.</p> <p>3 Q With regard to Project Unicorn.</p> <p>4 A It would be adverse to Highland with regard to</p> <p>5 other matters.</p> <p>6 Q I understand. But if another law firm came in</p> <p>7 and negotiated or drafted the amended LLC agreement and</p> <p>8 a subsequent arose about the amended LLC agreement, it</p> <p>9 is your opinion Wick Phillips would still be</p> <p>10 disqualified because they were involved prior to the</p> <p>11 amended LLC agreement in Project Unicorn, correct?</p> <p>12 A Correct.</p> <p>13 Q I guess I need to make it clear for the record.</p> <p>14 I don't concede that I think you're right, but I think</p> <p>15 you --</p> <p>16 MR. BROWN: Brant -- Brant, we can stipulate</p> <p>17 that you're not conceding any of the positions that</p> <p>18 Mr. Kehr is stating here unless you so state.</p> <p>19 MR. MARTIN: Fair enough.</p> <p>20 MR. BROWN: So you don't need to waste your</p> <p>21 time or breath.</p> <p>22 Q Thank you, Ken. All right. Talking about this</p> <p>23 Bridge Loan agreement, Mr. Kehr. I'm assuming that part</p> <p>24 of your opinion on the conflict here is based on the</p> <p>25 fact that Highland Capital Management, LP, is one of at</p> <p>Page 103</p>	<p>1 drafted and what the purchase agreements for individual</p> <p>2 properties said not relevant.</p> <p>3 Q All right. Let me give you -- let me ask you</p> <p>4 another question then. Let's assume that the DST's, the</p> <p>5 Delaware Statutory Trusts, were set up as part of</p> <p>6 Project Unicorn and the original PSA's. Are you with me</p> <p>7 so far?</p> <p>8 A I am.</p> <p>9 Q And that Wick Phillips worked on the loan</p> <p>10 agreement to set up that structure in September of 2018.</p> <p>11 Okay?</p> <p>12 A Very good.</p> <p>13 Q Later, an entirely different property that was</p> <p>14 not involved in the original Project Unicorn PSA's was</p> <p>15 purchased and shoved by Highland underneath one of those</p> <p>16 DST's. You with me so far?</p> <p>17 A I'm not certain. I need you to repeat that.</p> <p>18 Q Sure. I'm asking you to assume for the</p> <p>19 purposes of this hypothetical that after September 26th,</p> <p>20 2018, that there was another asset that was purchased by</p> <p>21 a Highland entity and put under the ownership structure</p> <p>22 of one of the DST's, and that that asset that was later</p> <p>23 purchased had nothing to do with the original Project</p> <p>24 Unicorn assets. Are you with me?</p> <p>25 A I am.</p> <p>Page 105</p>

<p>1 Q Under your opinion, I assume you are going to  2 say that because Wick Phillips represented parties in  3 connection with the loan agreement originally setting up  4 Project Unicorn, that an after acquired asset which was  5 later put into one of those entities, that Wick Phillips  6 would be disqualified from being adverse in that matter  7 as well, correct?  8 A I think that's probably correct. I -- I want  9 to try to chart this out. And I think I have some  10 related questions in order to be able to at least  11 mentally chart it out. Was the later acquisition  12 related to the Bridge Loan in any way?  13 Q I'm saying no. Under my hypothetical, the  14 answer to that question would be no.  15 A And your hypothetical is that -- that Highland  16 Capital Management, LP, acquired another property  17 unrelated to the 20 or 30 involved in Project Unicorn in  18 September of 2018 but put it into the SE Multifamily?  19 Q Yes. That is my hypothetical.  20 A I have to think about that one.  21 Q All right. And -- and let's put a -- kind of a  22 fine point on it. I'm -- I'm actually enjoying this  23 conversation. Let's say it was something completely  24 unrelated to Multifamily. All right. Let's call it --  25 you don't have these in California that much, but let's</p> <p style="text-align: right;">Page 106</p>	<p>1 to do with an oil and gas lease of which by way there  2 are many in California.  3 Q Fair enough.  4 A And -- and that's not related in any way that I  5 can see to the work that was done by your firm in and  6 around 2018. It's not the same LLC agreement. It's not  7 the same Bridge Loan.  8 Well, let's start with the Bridge Loan  9 agreement. That's the entry point. It's not the same  10 Bridge Loan agreement. It doesn't affect that -- it  11 doesn't affect anything about the work that you did.  12 It's not part of the -- the integrated project that I  13 see. You know, you -- if you look in the Bridge Loan  14 agreement, you'll see that there is a description of  15 purpose somewhere, and the purpose of the loan is to  16 acquire those 20 to 30 properties. It has nothing to do  17 with the later acquisition of an oil and gas lease and  18 in California or Alaska, or wherever it might be.  19 Q All right. But the acquisition of those  20 properties occurred on or about September of 2018,  21 correct?  22 A What's the antecedent for those properties?  23 The 20 or 30 you're talking about?  24 Q Yes.  25 A Yes. That's correct.</p> <p style="text-align: right;">Page 108</p>
<p>1 call it oil and gas lease. Right? They got a producing  2 oil and gas lease, and they don't know where to put it  3 so they put it under SE Multifamily. It wasn't part of  4 Project Unicorn in September of 2018. It wasn't part of  5 the loan agreement. It wasn't anticipated by any of the  6 schedulers. My question to you is, would Wick Phillips  7 be disqualified from representing a party about that  8 transaction of the oil and gas lease?  9 A I think the answer to that one is probably not.  10 I'm finding -- I'm finding it difficult to see how  11 anyone would feel that -- that your firms being adverse  12 to Highland with regard to a later transaction not  13 involved in the -- the 2018 acquisitions or the Bridge  14 Loan could be considered as being part of the prior  15 representations.  16 Q So how is it that the later changing of the  17 ownership allocations in the amended LLC agreement is  18 connected or related to my firms prior representation if  19 my firm had nothing to do with the amended LLC? What's  20 the difference between those two scenarios?  21 A Because this is the same Project Unicorn. If  22 the day after September 26 the parties agreed to make  23 some change, either a change with the lender or a change  24 among the borrowers, that's part of Project Unicorn.  25 It's still Project Unicorn. But your hypothetical had</p> <p style="text-align: right;">Page 107</p>	<p>1 Q All right. So I think my question is why does  2 a change of the ownership allocations seven months after  3 the acquisitions of the properties were included, why is  4 that any more related to the original acquisition than  5 the acquisition of an oil and gas lease?  6 A Well, because the Bridge Loan agreement still  7 exists. And -- and your firms work had to do with the  8 Bridge Loan agreement and the acquisition of the  9 properties and the agreements that went with the  10 acquisition of the properties all were part of a single  11 integrated transaction as I view it.  12 (Simultaneous speakers)  13 Q Sorry.  14 A If there is a later transaction involving a  15 different property financed in a different way, I'm  16 finding the connection considerably thinner, and I think  17 it's unlikely that that would be viewed as a violation  18 of the duty of undivided loyalty.  19 Q How is it in your opinion that the change of  20 the allocations in this amended LLC changed the  21 underlying terms of the Bridge Loan?  22 A Well, I don't think it changed the underlying  23 terms of the Bridge Loan.  24 Q All right.  25 A A new investor came in and that resulted in a</p> <p style="text-align: right;">Page 109</p>

<p>1 change in the allocations, but the loan still existed.  2 The promissory note still existed. It's still that same  3 integrated transaction. It's just been tinkered with a  4 bit.  5 Q All right. And the ownership allocations were  6 what were tinkered with, correct?  7 A Yes. But I would view the same answer if it  8 turned out that while this agreement says that the  9 purpose of the loan is to finance the acquisition of the  10 20 or 30 properties, if one of the properties dropped  11 out or a new property was dropped in in its place, and  12 do some tinkering with the Bridge Loan as a result of  13 that, you still have the same essential transaction.  14 Q I understand. I understand your opinion, and I  15 appreciate the clarification, sir. I want to move to  16 Exhibit 6.  17 (Exhibit No. 6 was marked for identification.)  18 A You skipped 205 pages, you know.  19 Q I know you're disappointed.  20 A Okay. And this one is even longer. I have it  21 up on my screen.  22 Q All right. I'm going to represent to you that  23 this one is three separate PSA's. This is part of the  24 appendix which was provided to you that Mr. Brown  25 pointed out had been provided to you, and it wasn't on</p> <p style="text-align: right;">Page 110</p>	<p>1 didn't consider the content of these PSA's in making  2 your opinion that the loan agreement and the LLC  3 agreement were a single integrated transaction, correct?  4 A That is correct.  5 Q Don't you think that's important?  6 A No.  7 Q Why not?  8 A Well, because as the Bridge Loan says, it's  9 purpose was to acquire a -- a portfolio of -- of  10 properties. The terms under which they were acquired  11 doesn't change the fact that the purpose of the Bridge  12 Loan was the acquisition, and that the acquisition  13 ultimately was for the LLC whose ownership interests  14 your creditor -- your client's creditor claim seeks to  15 adjust.  16 Q But the ownership allocation does affect the  17 Bridge Loan?  18 A Well, it does.  19 Q How?  20 A But that's not -- that's not the reason for my  21 analysis.  22 Q Well --  23 A The reason for my analysis is that the Bridge  24 Loan and the LLC agreement were part of an integrated  25 transaction.</p> <p style="text-align: right;">Page 112</p>
<p>1 the list, but we can agree that you saw it ahead of  2 time, right?  3 A I had it available to me, but I did not really  4 look at it. I certainly didn't study it at all.  5 Q All right. Would you -- so if I ask you a  6 question about one of these and you don't want to opine  7 on it or you don't want to confirm it, I want you to  8 point that out to me. Can you do that?  9 A Of course.  10 Q All right. Because it's my understanding that  11 these PSA's, there is three of them in this one exhibit.  12 One starts on appendix page 7. The second starts on  13 appendix page 81, and the third one starts on appendix  14 page 150, but these PSA's were for the purchase of the  15 mortgaged properties and the portfolio properties. Do  16 you have that understanding or do you not?  17 A That is my understanding.  18 Q All right. And you would agree with me that  19 Highland Capital Management, LP, was not a party to the  20 PSA's, correct?  21 A That's my understanding, although, again, I  22 haven't actually looked at all three of them to confirm  23 that but that's my understanding.  24 Q All right. And so did you -- so since you  25 haven't really looked at them, I'm assuming that you</p> <p style="text-align: right;">Page 111</p>	<p>1 Q I understand that but I'm asking you a  2 different question. So it's my understanding that the  3 client we're bringing that Mr. Brown is trying to  4 disqualify us from is to say that the ownership  5 allocation changed in the amended LLC agreement. That  6 change was wrong in some way, shape, or form, and we're  7 getting disqualified or we're attempting to be  8 disqualified from that, because somehow that change in  9 the ownership allocation was related to the work that we  10 did on the Bridge Loan. Can we agree on that?  11 A Yes.  12 Q All right. So my question to you is how does  13 the change in the ownership allocation affect the work  14 that was done on the Bridge Loan other than your view  15 that this was a single integrated transaction?  16 A Well, I think the starting point is it was a  17 single integrated transaction, and what makes it a  18 single integrated transaction is that the Bridge Loan  19 existed for the purpose of the acquisitions.  20 Q Which occurred prior to the amending of the  21 LLC, correct?  22 A I'm sorry. Which occurred?  23 Q The acquisition of the properties. The  24 acquisition of the underlying assets occurred prior to  25 the amendment of the LLC, correct?</p> <p style="text-align: right;">Page 113</p>



<p>1 A I believe that's correct.</p> <p>2 Q All right. And so the work on the loan</p> <p>3 agreement from your prior testimony was, well, it's a</p> <p>4 single transaction because the loan agreement was used</p> <p>5 to purchase the underlying assets, right?</p> <p>6 A Yes. That's fair enough.</p> <p>7 Q Okay. And that work was done and then later --</p> <p>8 in fact, seven months later, the LLC agreement was</p> <p>9 amended, correct?</p> <p>10 A Correct.</p> <p>11 Q And it's your position that seven months later</p> <p>12 when that LLC agreement was amended that that relates</p> <p>13 back to the original Project Unicorn transaction such</p> <p>14 that it was a single integrated transaction, correct?</p> <p>15 A Well, my -- my recollection of the amendment is</p> <p>16 that it says it relates back, but even if it didn't, my</p> <p>17 answer would be the same.</p> <p>18 Q And your answer would be yes, right?</p> <p>19 A Yes. The LLC agreement still exists. It's</p> <p>20 been amended but it's the same LLC agreement. It's the</p> <p>21 same basic agreement, and the Bridge Loan still exists</p> <p>22 and -- and it was -- the Bridge Loan was for the purpose</p> <p>23 of carrying out the purpose of the LLC agreement.</p> <p>24 That's all one thing.</p> <p>25 Q Did you take into account the lapse of time</p> <p style="text-align: right;">Page 114</p>	<p>1 duty of loyalty attached from there until eternity as it</p> <p>2 related to Project Unicorn, correct?</p> <p>3 A That is correct.</p> <p>4 Q And therefore since the amendment of the LLC</p> <p>5 was related to Project Unicorn even though it was seven</p> <p>6 months later, in your opinion, that duty of loyalty</p> <p>7 still attached and therefore Wick Phillips can't</p> <p>8 represent anybody in trying to unwind the amendment of</p> <p>9 the LLC, correct?</p> <p>10 A Correct.</p> <p>11 Q All right.</p> <p>12 THE REPORTER: Can you slow down, counsel?</p> <p>13 Q Yeah. Go ahead.</p> <p>14 THE REPORTER: I just said, can you slow down?</p> <p>15 Q Yes, ma'am. Not the first or the last time</p> <p>16 that's been said. I apologize. Mr. Kehr, are you aware</p> <p>17 that the loan agreement was not the sole source of</p> <p>18 funding to acquire the properties?</p> <p>19 A Yes.</p> <p>20 Q And, in fact, Freddie Mac also provided</p> <p>21 financing, correct?</p> <p>22 A I -- I don't recall knowing that it was Freddie</p> <p>23 Mac.</p> <p>24 (Exhibit No. 14 was marked for identification.)</p> <p>25 Q All right. All right. Let's go to -- do we</p> <p style="text-align: right;">Page 116</p>
<p>1 between the original closing and the amendment of the</p> <p>2 LLC in reaching the conclusion that this was a single</p> <p>3 transaction?</p> <p>4 A No. In my view, it's irrelevant.</p> <p>5 Q So are you aware that there are courts that</p> <p>6 consider the timing of two different transactions as a</p> <p>7 contributing factor of whether or not a transaction is</p> <p>8 considered a single integrated transaction?</p> <p>9 A I think there -- no. No. I don't think I've</p> <p>10 ever seen that. Let me think about that for a moment.</p> <p>11 Yes. I think that that's true as to whether there is an</p> <p>12 integration. Yes.</p> <p>13 Q Right. But you didn't take that into account</p> <p>14 that the amendment of the LLC occurred seven months</p> <p>15 after the original transaction, correct?</p> <p>16 A I -- I didn't because I think that for my</p> <p>17 purposes it's not relevant. It may be relevant for</p> <p>18 other purposes in -- in contract interpretation, but</p> <p>19 it's not relevant for purposes of my area analysis of</p> <p>20 the loyalty duty that the law firms involved in the --</p> <p>21 in the consummation of Project Unicorn have to their</p> <p>22 clients or former clients in that project.</p> <p>23 Q I understand. Because I think it's your</p> <p>24 position that once Wick Phillips did work on that</p> <p>25 original loan agreement, the Project Unicorn, that that</p> <p style="text-align: right;">Page 115</p>	<p>1 have Mr. McGraner's declaration? Fourteen. All right.</p> <p>2 We're going to go out of order here for a second,</p> <p>3 Mr. Kehr, and I'm going to show you -- hold on. Let's</p> <p>4 go back to the title. Do you see a document on the</p> <p>5 screen in front of you?</p> <p>6 A Yes. And that's Exhibit 14?</p> <p>7 Q Yes.</p> <p>8 A Okay. I've opened it on my computer.</p> <p>9 Q Okay. This is a declaration from Matthew</p> <p>10 McGraner. Do you know who that is?</p> <p>11 A I'm afraid -- well, yes. Because it -- my</p> <p>12 memory was -- was joggled by paragraph two. I probably</p> <p>13 would have gotten the answer wrong if it hadn't said it</p> <p>14 right in front of me. Senior vice president of</p> <p>15 NexPoint.</p> <p>16 Q Right. And that's -- NexPoint is the client</p> <p>17 we're currently representing that Mr. Brown is trying to</p> <p>18 disqualify us from representing. You understand that,</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 MR. BROWN: Hold on. Objection. Hold on,</p> <p>22 Brant. I think that is a different entity. NexPoint</p> <p>23 Real Estate Advisers is a different entity than we're</p> <p>24 trying to disqualify you from representing as --</p> <p>25 (Simultaneous speakers)</p> <p style="text-align: right;">Page 117</p>

<p>1 Q All right. Mr. Kehr, let me ask it a different 2 way. Mr. McGraner's statement says that he's the 3 executive vice president for NexPoint Real Estate 4 Advisers, LLC, correct? 5 A It does. 6 Q It states that he's been an employee of NREA 7 since June of 2016, correct? 8 A Yes. 9 Q All right. And let me ask one question. Since 10 you had never heard of this transaction prior to June of 11 2021, you would agree with me that the persons involved 12 in the transaction and the representation of Wick 13 Phillips have personal knowledge of what happened and 14 you don't, correct? 15 A Of course. As an expert witness, I never have 16 personal knowledge. 17 Q Excellent. All right. I want to go to 18 paragraph six of Exhibit 14. Paragraph six states, "In 19 connection with and to help fund the Unicorn 20 Acquisition, Key Bank National Association and Freddie 21 Mac provided various financing the loans. Plural. One 22 such financing was a Bridge Loan with Key Bank for 23 approximately half of the purchase price. However, Key 24 Bank required additional borrowers on the Bridge Loan 25 and as a result, HCMLP, NexPoint Real Estate Partners,</p> <p style="text-align: right;">Page 118</p>	<p>1 A It would be prevented from being adverse to 2 Freddie Mac with respect to Project Unicorn. 3 Q All right. That's a fair point. Let's say 4 that there was a borrower -- let me just pick one. Go 5 back to the appendix to the purchase and sale agreements 6 which I believe is Exhibit 6. So looking here on 7 Exhibit 6, we've got a purchase and sale contract, and 8 I'm going to pick one. Let's say Sof-X Monument 9 Holdings, LP, which is a party to this. Do you see 10 that? 11 A Yes. 12 Q Would their lawyers be prevented from attacking 13 the amended LLC agreement? 14 A If doing so would be adverse to the interests 15 of their former client. 16 Q All right. 17 A Assuming that it's a former lawyer-client 18 relationship. 19 Q And, in your opinion -- going back to the 20 PSA's. Is it important to you that the loan agreement, 21 the Bridge Loan agreement, didn't have the -- the 22 Highland entity as a party? 23 MR. BROWN: Objection. Mischaracterizes the 24 loan agreement. 25 Q Do you know whether or not the conflicting</p> <p style="text-align: right;">Page 120</p>
<p>1 LLC, formally known as HRCE Partners, LLC, and five 2 other entities were included as co-borrowers under the 3 Bridge Loan with NREP. NREP was the lead borrower under 4 the Bridge Loan agreement and the main point of contact 5 for the borrowing institutes." Did I read that 6 correctly? 7 A Yes. 8 Q But that does, in fact, indicate that Freddie 9 Mac was apart of the financing for Project Unicorn, 10 correct? 11 A It does. 12 Q Did you consider that in making your opinion 13 that the loan agreement and the LLC agreement were a 14 single integrated transaction? 15 A It's not relevant to my analysis that there 16 were other sources of financing. 17 Q Why is that? Once we touch the loan agreement 18 we were off limits? 19 A Because the loan agreement is, in my view, part 20 of the same transaction as the LLC agreement. 21 Q Right. And so under your analysis then, a law 22 firm that was representing Freddie Mac in one of those 23 other loans related to Project Unicorn would also be 24 prevented under Texas rule 109 from representing anybody 25 in connection with the amended LLC agreement, correct?</p> <p style="text-align: right;">Page 119</p>	<p>1 entity, the Highland entity, was a party to the Bridge 2 Loan agreement? 3 MR. BROWN: Which -- which Highland entity? 4 Are you referring to the debtor, Grant -- 5 MR. MARTIN: Yes. 6 MR. BROWN: -- Or another Highland entity? 7 MR. MARTIN: I apologize, Mr. Brown. Yes. I'm 8 referring to the debtor. 9 A Well, give me one moment. 10 Q Yeah. Take your time. 11 A Highland Capital Management, LP, is the first 12 listed borrower. Am I misunderstanding your question? 13 Not certain what you're driving at. 14 Q You may be. There is a bunch of documents and 15 sometimes, Mr. Kehr, honestly I get confused as well. 16 But I'm looking here at the Bridge Loan agreement which 17 is Exhibit 5. 18 A I am also. 19 Q All right. So we got Highland Capital 20 Management, LP. You see that? 21 A Yes. I do. 22 Q We got HCRE Partners, LLC, the Dugaboy 23 Investment Trust, the SLHC Trust. All -- all of these 24 parties were parties to the Bridge Loan agreement, 25 right?</p> <p style="text-align: right;">Page 121</p>

<p>1 A Right.  2 (Exhibit No. 7 was marked for identification.)  3 Q All right. I want to go to Exhibit 7.  4 THE REPORTER: Are you marking all of these,  5 counsel?  6 MR. MARTIN: Yes. I'm sorry. Yes, ma'am.  7 MR. BROWN: Brant, it's been another hour, and  8 at a convenient time, I would like to take another  9 convenience break.  10 MR. MARTIN: Absolutely. Why don't we just do  11 that now.  12 MR. BROWN: Okay. Five minutes?  13 MR. MARTIN: Sure.  14 (Recess from 1:27 p.m. to 1:36 p.m.)  15 Q Mr. Kehr, you understand you're still under  16 oath, correct?  17 A Yes.  18 Q All right. I want to move to Exhibit 7, and,  19 Mr. Kehr, if you're bringing it up on your computer, let  20 me know when you're there.  21 A I have it.  22 Q All right. You see Exhibit 7 is an email from  23 Paul Broadus dated Thursday, August 23rd, 2018, to  24 Helen Kim. Copied on that is Matt McGraner, Mark  25 Patrick, Rick Swadley, and Jae Lee. Do you see that?</p> <p style="text-align: right;">Page 122</p>	<p>1 Q And you don't have any evidence that Wick  2 Phillips drafted the amended LLC agreement seven months  3 later, correct?  4 A Correct.  5 (Exhibit No. 8 was marked for identification.)  6 Q Madam Court Reporter, please mark Exhibit 7.  7 Let's go to Exhibit 8. Mr. Kehr, are you on Exhibit 8?  8 A I have it.  9 Q Have you seen this document before?  10 A Yes.  11 Q Did you use this document -- did you review  12 this documents in forming your opinions in this case?  13 A I looked at it, but it's not essential to my  14 opinions.  15 Q I understand. I'm going to ask you some  16 questions about it anyway. It's dated Thursday,  17 August 9th, 2018, at 12:58 p.m., correct?  18 A Yes.  19 Q And the author is Paul Broadus, correct?  20 A Correct.  21 Q And the addressees are Daniel Cullen at Baker  22 McKenzie, David Gong at Baker McKenzie, Peter Matejcek  23 at Baker McKenzie, and Brian Mitts and Bonner McDermott.  24 Did I read that correctly?  25 A Yes.</p> <p style="text-align: right;">Page 124</p>
<p>1 A I do.  2 Q I'm going to represent to you that none of  3 those people work for Wick, Phillips, Gould, and Martin.  4 Do you have any reason to dispute that representation?  5 A No.  6 Q All right. And Mr. Broadus, and, in fact, I'm  7 going to represent to you that those were all internal  8 people. Mr. Broadus says to Helen, "As discussed, can  9 you please form the following LLC's? SC Multifamily  10 Holdings, LLC." And he lists an ownership percentage  11 down there. HCMLP at 49 percent and HCREP at  12 51 percent, correct?  13 A Yes.  14 Q And then the second LLC he wants Ms. Kim to  15 form is SE Multifamily REIT Holdings, LLC. Do you see  16 that?  17 A I do.  18 Q And the second bullet point under number 2A  19 states, "We are drafting the LLC agreement so we have  20 that covered." Did I read that correctly?  21 A Yes.  22 Q And I asked you this before. But you don't  23 have any evidence that Wick Phillips drafted the LLC  24 agreement, right?  25 A That is correct.</p> <p style="text-align: right;">Page 123</p>	<p>1 Q I'm going to represent to you that none of  2 those people work for Wick Phillips either. Do have any  3 tuning to dispute that statement?  4 A No.  5 Q And you and I can agree that Baker McKenzie is  6 not Wick Phillips, correct?  7 A Yes. We can agree on that.  8 Q Okay. Considering I used to work at Baker  9 McKenzie, I'm quite aware that they are very, very  10 different firms. And so as far as you know, Wick  11 Phillips had no involvement in the Delaware Statutory  12 Trust structures involved in Project Unicorn, correct?  13 A Correct.  14 Q And when this email refers to a DST, it's  15 referring to the formation of Delaware Statutory Trusts,  16 correct?  17 A Yes.  18 (Exhibit No. 10 was marked for identification.)  19 Q All right. Let's go to Exhibit 10. Mr. Kehr,  20 Exhibit 10 is excerpts -- actually, it might be the  21 whole thing of a deposition of Mr. Mark Patrick. Do you  22 see that?  23 A Yes. I do.  24 Q Did you review this in reaching your opinions  25 in this case?</p> <p style="text-align: right;">Page 125</p>

<p>1 A Give me one moment to look at it for a moment.</p> <p>2 The answer is, yes. I believe that I did.</p> <p>3 Q All right. I want to direct your attention to</p> <p>4 certain testimony in this deposition, and I'm going to</p> <p>5 give you the disclaimer, Mr. Kehr, that I know that you</p> <p>6 are not Mr. Patrick, and I know that you don't know</p> <p>7 everything that's inside Mr. Patrick's head. So I'm not</p> <p>8 asking you to guess as to what Mr. Patrick may or may</p> <p>9 not know outside of what he said in this deposition, but</p> <p>10 I do want to get your opinion on some of the things he</p> <p>11 said. Do you understand the disclaimer that I gave you?</p> <p>12 A Yes.</p> <p>13 Q And if you don't feel comfortable giving me</p> <p>14 your opinions on that, I want you to let me know. Okay?</p> <p>15 A Very good.</p> <p>16 Q All right. I want you to turn to page 25, and</p> <p>17 I have these highlighted. Are they highlighted on the</p> <p>18 copies on your computer?</p> <p>19 A Yes.</p> <p>20 Q So starting on line 12, question, "Did you have</p> <p>21 any role in connection with the LLC agreement?" Line</p> <p>22 15, answer, "Yes." Question on line 17, "Please</p> <p>23 describe it." Answer, "I coordinated the document."</p> <p>24 Question, "What does that mean?" Answer, "It means I</p> <p>25 helped facilitate this -- the creation of this document</p> <p style="text-align: right;">Page 126</p>	<p>1 one of the shared employees in the Highland</p> <p>2 organization, might have been involved but --</p> <p>3 Q Fair enough.</p> <p>4 A -- Hunton and Williams definitely was involved.</p> <p>5 Q And you had no evidence that Wick Phillips was</p> <p>6 involved, correct?</p> <p>7 A Correct.</p> <p>8 Q All right. Let's go -- I'm going to try to</p> <p>9 shorten this up for all of us, Mr. Kehr. Let's go to</p> <p>10 page 32.</p> <p>11 A I'm there.</p> <p>12 Q All right. Looking -- starting on line 8. The</p> <p>13 highlighted portions of Mr. Patrick's deposition.</p> <p>14 Question, "Did Wick Phillips have any involvement in the</p> <p>15 representation of any party -- let me restate that. Did</p> <p>16 Wick Phillips represent Highland in connection with the</p> <p>17 original LLC agreement?" Answer, "No." Question, "Did</p> <p>18 Wick Phillips represent HCRE in connection with the</p> <p>19 original LLC agreement?" Answer, "No." Did I read that</p> <p>20 correctly?</p> <p>21 A You did.</p> <p>22 Q And as we sit here today, you have no</p> <p>23 information to dispute what Mr. Patrick said under oath,</p> <p>24 correct?</p> <p>25 A Well, I would -- I would say that the -- the</p> <p style="text-align: right;">Page 128</p>
<p>1 by coordinating with respective parties." Question, "So</p> <p>2 you coordinated with Highland and HCRE?" Answer,</p> <p>3 "Coordinated with Highland and HCRE. I would describe</p> <p>4 it as I was -- I was coordinating the deal between the</p> <p>5 two parties and having that coordination reflect what</p> <p>6 was desired in this LLC agreement." Question, "Okay.</p> <p>7 And what does your coordination actually involve in</p> <p>8 practical terms?" Answer, "Yes. That's a good</p> <p>9 question. I recall calling up the law firm of Hunton</p> <p>10 and Williams to draft and prepare this LLC agreement."</p> <p>11 Question, "And why did you call the law firm of Hunton</p> <p>12 and Williams?" Answer, "It's generally the firm that I</p> <p>13 worked with in the past." Question, "And you worked</p> <p>14 with Hunton and Williams in your capacity as an employee</p> <p>15 of Highland?" Answer, "Yes." Did I read that</p> <p>16 correctly?</p> <p>17 A You did.</p> <p>18 Q You and I agree that Hunton and Williams is not</p> <p>19 Wick, Phillips, Gould, and Martin, correct?</p> <p>20 A Yes.</p> <p>21 Q So this would indicate, as I think you</p> <p>22 indicated earlier, that Hunton and Williams drafted the</p> <p>23 original LLC agreement, correct?</p> <p>24 A Well, it was at least involved in it. There is</p> <p>25 that earlier email that suggests that somebody in-house,</p> <p style="text-align: right;">Page 127</p>	<p>1 questions and answers were a bit loose. I think the</p> <p>2 accurate statement would be that Wick Phillips was not</p> <p>3 involved in the drafting of the LLC agreement or</p> <p>4 providing legal advice to Highland with regard to the</p> <p>5 LLC agreement. And as I also previously said, I'm not</p> <p>6 aware of any evidence to suggest that Highland relied on</p> <p>7 Wick Phillips for advice or representation concerning</p> <p>8 the negotiation or drafting of the LLC agreement. In</p> <p>9 connection with is a much looser statement, and my view</p> <p>10 is that the Bridge Loan is in connection with the LLC</p> <p>11 agreement.</p> <p>12 Q I understand that, Mr. Kehr, and I think you've</p> <p>13 made that very clear, but I appreciate the clarification</p> <p>14 and I would encourage you to continue to clarify your</p> <p>15 answers when you feel the need. But you and I can agree</p> <p>16 that this witness, who was there at the time, confirmed</p> <p>17 that Wick Phillips did not represent Highland or anybody</p> <p>18 else in connection with the drafting of the original LLC</p> <p>19 agreement, correct?</p> <p>20 A Yes.</p> <p>21 Q All right. Let's go quickly to page 63 of the</p> <p>22 same exhibit.</p> <p>23 A I'm there.</p> <p>24 Q Line three. Question, "Do you know if Wick</p> <p>25 Phillips had any role in connection with the amended LLC</p> <p style="text-align: right;">Page 129</p>

<p>1 agreement?" Answer, "My understanding they had no  2 role." Question, "Did you ever have any communications  3 with Wick Phillips in connection with the amended LLC  4 agreement?" Answer, "I do not recall ever having  5 communications with Wick Phillips on this amended LLC  6 agreement." Did I read that correctly?  7 A Yes.  8 Q You have no evidence to dispute what  9 Mr. Patrick said under oath there, correct?  10 A That is correct.  11 (Exhibit No. 11 was marked for identification.)  12 Q All right. Let's go to Exhibit 11. This is  13 the actual original limited liability company agreement  14 dated as of August 23rd, 2018, correct?  15 A Yes.  16 Q And you reviewed this, I presume, in connection  17 with your opinions in this case?  18 A I did.  19 Q All right. I want you to turn to page 18 which  20 is Schedule A.  21 A I have it.  22 Q And this provides for the member name, the  23 capital contribution, and the percentage interest,  24 correct?  25 A Yes.</p> <p style="text-align: right;">Page 130</p>	<p>1 One is that somewhere in this agreement there  2 is a statement of purpose, and the statement of purpose  3 is the acquisition of the properties that will go into  4 the LLC, and I think that that's the key point. The  5 reason for the existence of this loan agreement with  6 Highland as a borrower and the reason for the -- the  7 Bridge Loan are a single project. What you've called  8 Project Unicorn. They're inextricably connected. One  9 wouldn't exist without the other.  10 Q I think you and I appreciate that, Mr. Kehr,  11 and I think we've -- we've spent a lot of time today  12 talking about your view of that, correct?  13 A We have.  14 Q All right. And I know that earlier, in fact,  15 you mentioned that provision about the fact that the  16 purpose of the loan was for the acquisition of the  17 unicorn properties and that that formed the basis of  18 your opinion, correct?  19 A It forms a basis for my opinion. Yes.  20 Q Right. Okay. And -- and -- so fair enough.  21 I'm asking for what else forms the basis for your  22 opinion that this was a single integrated transaction  23 other than what you've already testified to today?  24 A I don't think there is anything that I haven't  25 testified to already.</p> <p style="text-align: right;">Page 132</p>
<p>1 Q And according to Schedule A on the original LLC  2 agreement, HCRE has a capital contribution of \$51 or  3 51 percent percentage interest, correct?  4 A Yes.  5 Q And Highland has a \$49 capital contribution for  6 a 49 percent percentage interest, correct?  7 A Correct.  8 Q Would you -- you would agree with me that these  9 are the ownership percentages that made it into the  10 Delaware Statutory Trust charts that were attached to  11 the loan agreement, correct?  12 A Yes.  13 Q And this is, at least in part, a basis of your  14 opinion that the loan agreement and the LLC agreement  15 were a single integrated transaction, correct?  16 A Yes.  17 Q All right. What else supports your opinion, in  18 your view, that these were a single integrated  19 transaction such that Wick Phillips loan -- work on the  20 loan agreement implicates this document?  21 A Well, I first want to make it clear that I'm  22 not here as an advocate, and I haven't attempted to  23 compile all of the information or arguments that might  24 support my opinion, but I -- I can give you a -- a  25 couple.</p> <p style="text-align: right;">Page 131</p>	<p>1 Q Okay.  2 A Nothing else I can think of as I sit here.  3 (Exhibit No. 12 was marked for identification.)  4 Q Fair enough. Thank you very much. All right.  5 I'm going to go now to Exhibit 12. You've seen this  6 document before, correct?  7 A I see it.  8 Q And this is the amended and restated limited  9 liability company agreement dated as of March 15th,  10 2019, to be effective as of August 23rd, 2018, correct?  11 A Well, not precise [indiscernible]. Entered  12 into as of March 15 to be effective as of the prior  13 August.  14 Q Okay. I was just reading off the page itself.  15 It says dated as of, but I don't think that's -- it's  16 probably a distinction without a difference. Can you  17 and I agree that this amended LLC agreement was executed  18 seven months after the original?  19 A Yes.  20 Q Thank you. And if you would, I want you turn  21 to -- and of course page numbers on this are going to be  22 difficult. If you look at the top of each page, there  23 is a page number because these were filed in court, and  24 I want you to look at page 22 of 30 on Exhibit 12.  25 A Schedule A?</p> <p style="text-align: right;">Page 133</p>



<p>1 Q Yes. Schedule A?</p> <p>2 A Very good.</p> <p>3 Q All right. And we've talked about the fact</p> <p>4 that you didn't -- you don't think that the fact that</p> <p>5 this was executed six or seven months after the</p> <p>6 transaction, in your mind, that doesn't change your</p> <p>7 opinion that this was a single integrated transaction,</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q All right. And this Schedule A includes</p> <p>11 capital contributions and percentage interests that were</p> <p>12 different from the original LLC agreement, correct?</p> <p>13 A That is correct.</p> <p>14 Q Now, you would also agree with me that these</p> <p>15 are not the ownership percentages that were in the</p> <p>16 original loan agreement and the DST charts in the</p> <p>17 original loan agreement, correct?</p> <p>18 A Correct.</p> <p>19 Q And you would agree with me that Wick Phillips</p> <p>20 had no involvement with this amended LLC agreement,</p> <p>21 correct?</p> <p>22 A None that I know of.</p> <p>23 Q Now, are you aware that the claims that are</p> <p>24 made in -- in the -- the lawsuit that -- that Mr. Brown</p> <p>25 is trying to disqualify my firm from that those claims</p> <p style="text-align: right;">Page 134</p>	<p>1 integrity of the bar, and if I may give you a slightly</p> <p>2 long-winded answer. It's not --</p> <p>3 (Simultaneous speakers)</p> <p>4 A You're not going to complain.</p> <p>5 Q No. It's fine. I want to know what you're</p> <p>6 going to say so please go ahead.</p> <p>7 A Sure. The -- it's not intuitively obvious that</p> <p>8 lawyers should be permitted to serve in the courts, and</p> <p>9 there have been times in history when lawyers were</p> <p>10 prohibited from appearing in courts. Sure would</p> <p>11 simplify things if there weren't any pesky lawyers</p> <p>12 involved. But one of the reasons that lawyers are</p> <p>13 involved in the litigation process is that they are</p> <p>14 important to the functioning of the legal system, and</p> <p>15 part of that functioning is that they need to get from</p> <p>16 clients all of the information that the lawyer needs to</p> <p>17 provide an informed and reasonably well-rounded opinion</p> <p>18 and advice to the client, and the lawyer will get that</p> <p>19 information, and the lawyers opinion then will only be</p> <p>20 trusted if the lawyer is viewed as being entirely loyal</p> <p>21 to the client. And that's, in my view, the essential</p> <p>22 reason for the duty of undivided loyalty.</p> <p>23 With a current client, the duty of undivided</p> <p>24 loyalty prohibits the lawyer from being adverse to the</p> <p>25 current client on any matter even if entirely unrelated</p> <p style="text-align: right;">Page 136</p>
<p>1 relate to these allocations that are in the amended LLC</p> <p>2 agreement?</p> <p>3 A That's my understanding.</p> <p>4 Q All right. And -- but in your opinion, the</p> <p>5 fact that Wick Phillips was not involved in the amended</p> <p>6 LLC agreement does not change your opinion as to the</p> <p>7 fact that this was a single integrated transaction,</p> <p>8 correct?</p> <p>9 A Correct.</p> <p>10 Q Other than what I have asked you about today,</p> <p>11 and we've covered a lot of ground, do you have any other</p> <p>12 opinions that you plan on testifying about if this</p> <p>13 matter comes to a hearing?</p> <p>14 A Well, I can think of one thing that is part of</p> <p>15 my analysis that might come up when I testify that</p> <p>16 hasn't come up so far this morning.</p> <p>17 Q Please.</p> <p>18 A And that is with regard to the duty of loyalty.</p> <p>19 It is common, and I think this is also true in the</p> <p>20 American Airlines opinion, that the continuing duty of</p> <p>21 loyalty is explained in terms of the interests of the</p> <p>22 former client. But it's my opinion that the duty of</p> <p>23 loyalty has a much broader significance.</p> <p>24 Enforcement of the continuing duty of loyalty</p> <p>25 is important for the maintenance of public confidence in</p> <p style="text-align: right;">Page 135</p>	<p>1 to the subject matter of the current representation.</p> <p>2 It's viewed as destructive of the lawyer-client</p> <p>3 relationship, and, therefore, of the lawyer's role in</p> <p>4 the legal system and the functioning of the legal</p> <p>5 system.</p> <p>6 Q Can I -- can I ask you a question as you go</p> <p>7 through this, or do you want me to wait until the end?</p> <p>8 A Well, I'm almost done and then by all means.</p> <p>9 Q All right.</p> <p>10 A It's -- it's -- it's considered to be</p> <p>11 destructive if the client ever sees a current lawyer on</p> <p>12 the other side of the table. Figuratively speaking.</p> <p>13 Q No matter the type of matter?</p> <p>14 A Correct. Without regard to whether it's</p> <p>15 litigation, non-litigation, or some ambiguous in between</p> <p>16 sort of thing such as foreclosure of a deed of trust</p> <p>17 under a power of sale, which is a non-courtroom</p> <p>18 proceeding. I'm not certain whether that's</p> <p>19 transactional or litigation. It's somewhere in between.</p> <p>20 With a former client, a lawyer is permitted to</p> <p>21 be adverse to a former client, but not if it implicates</p> <p>22 the lawyers work for the former client, and that's the</p> <p>23 same or substantially related matter analysis in almost</p> <p>24 every situation. So I think it's important to keep in</p> <p>25 mind, and courts do from time to time accurately capture</p> <p style="text-align: right;">Page 137</p>

<p>1 the idea that the functioning of the legal system 2 depends on loyalty. There are some people in the ethics 3 committee -- I'm sorry. Community who actually say 4 there is only one duty. It's the duty of undivided 5 loyalty, and the other obligations, confidentiality and 6 full disclosure in particular, are viewed by some people 7 as simply being elements of the duty of undivided 8 loyalty.</p> <p>9 But I would think broadly in terms of the 10 functioning of lawyers in the legal system, and the role 11 that they play and the expectations that the legal 12 system wants to have clients hold in order for the 13 clients to fully disclose themselves to their lawyers 14 and then to trust and rely on the advice that the lawyer 15 provides.</p> <p>16 Q All right. I'm going to ask you a couple 17 follow-up questions on that.</p> <p>18 A Sure. Go ahead.</p> <p>19 Q When you're talking about the legal systems 20 encouragement and incentives for clients to give their 21 lawyers full information, that necessarily implicates 22 the rational behind rules such as 105 and the 23 confidentiality, correct?</p> <p>24 A It does.</p> <p>25 Q And you're not alleging that there was a breach</p> <p>Page 138</p>	<p>1 A No. No. I'm not saying -- I wasn't going to 2 tell you what an informed consent is --</p> <p>3 Q Okay.</p> <p>4 A I was going to give you an example of when 5 consent sometimes is given. It's irrelevant to this 6 situation, but it does happen in joint representations. 7 Outside -- if -- if clients -- if the lawyer were to 8 represent one of the former joint clients against the 9 other former joint client on an unrelated matter, there 10 would be no prohibition.</p> <p>11 Q I think you answered my follow-up question. 12 Mr. Kehr, I know that you and I have had disagreements 13 on the substance of your testimony, but have you been 14 treated with respect today?</p> <p>15 A Always.</p> <p>16 Q Thanks a lot. Okay. I pass the witness.</p> <p>17 MR. BROWN: I don't have any questions of 18 Mr. Kehr.</p> <p>19 MR. MARTIN: Okay. I gave you back some time, 20 Mr. Kehr.</p> <p>21 MR. BROWN: Yeah. One thing I just wanted to 22 raise is, you know, you asked for other opinions, and I 23 think you said he didn't have any others. He has been 24 designated also as a rebuttal witness, and so after we 25 know what Mr. Sellman's testimony is, it is possible</p> <p>Page 140</p>
<p>1 of confidentiality in this case, correct?</p> <p>2 A Correct.</p> <p>3 Q All right. Secondly, let me give you a 4 hypothetical, and I'm not sure I'm even arguing with you 5 on this. I just want to make sure I understand the full 6 scope of your soliloquy here which was, let's say that I 7 represent Client A, and Client A is in a transaction 8 with Client B, who I do not represent. Are you with me 9 so far?</p> <p>10 A Yes.</p> <p>11 Q Client A continues to be my client. Later on 12 there is a dispute between Client A and Client B related 13 to another matter. Do you think that because I 14 represented Client A in a joint -- in a common matter 15 with Client B originally, that I can't represent Client 16 A against client B?</p> <p>17 A In the same manner or an unrelated matter?</p> <p>18 Q Let's do both. I think I know what you're 19 going to say, but go -- let's do both. Let's say it's 20 in the same matter.</p> <p>21 A Then the answer is, no, unless there has been a 22 contractual, informed consent. Sometimes -- there 23 sometimes is and I can give you an example.</p> <p>24 Q No. I -- I know what informed consent is. 25 What if it's --</p> <p>Page 139</p>	<p>1 that Mr. Kehr will have opinions to rebut Mr. Sellman's 2 testimony.</p> <p>3 MR. MARTIN: Duly noted, Mr. Brown. And I am 4 not going to dispute that he is allowed to present 5 rebuttal testimony to Mr. Sellman's and Mr. Sellman will 6 be allowed to present -- well, hopefully will be allowed 7 to present testimony to Mr. Kehr. But duly noted and 8 I'm not going to dispute that he can have additional 9 opinions that wouldn't violate the question I just asked 10 him if those opinions are in rebuttal to Mr. Sellman.</p> <p>11 THE REPORTER: Off the record?</p> <p>12 MR. MARTIN: I'm fine going off the record.</p> <p>13 MR. BROWN: I'm fine.</p> <p>14 (Deposition concluded at 3:02 p.m.)</p> <p>15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 141</p>

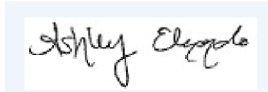
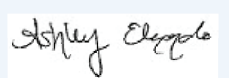
1	CHANGES AND SIGNATURE			
2	WITNESS NAME: ROBERT L. KEHR			
3	DATE OF DEPOSITION: SEPTEMBER 16, 2021			
4				
5	PAGE	LINE	CHANGE	REASON
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1	I, ROBERT L. KEHR, have read the foregoing
2	deposition and hereby affix my signature that same is
3	true and correct, except as noted above.
4	
5	ROBERT L. KEHR
6	
7	THE STATE OF _____ )
8	COUNTY OF _____ )
9	Before me, _____, on this day
10	personally appeared ROBERT L. KEHR, known to me (or
11	proved to me under oath or through _____)
12	(description of identity card or other document) to be
13	the person whose name is subscribed to the foregoing
14	instrument and acknowledged to me that he executed the
15	same for the purposes and consideration therein
16	expressed.
17	Given under my hand and seal of office this
18	_____ day of _____, _____.
19	
20	NOTARY PUBLIC IN AND FOR
21	THE STATE OF _____
22	
23	
24	
25	Job No. TX4800824
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1	IN THE UNITED STATES BANKRUPTCY COURT	
2	FOR THE NORTHERN DISTRICT OF TEXAS	
3	DALLAS DIVISION	
4	In re:	)
5		)
6	HIGHLAND CAPITAL MANAGEMENT, ) Chapter 11	
7	L.P.	)
8		)
9	Debtor.	) Case No.:19-34054-sgj11
10	*****	
11	REPORTER'S CERTIFICATE	
12	DEPOSITION OF ROBERT L. KEHR	
13	SEPTEMBER 16, 2021	
14		
15	I, Ashley Elizondo, Certified Court Reporter,	
16	in and for the State of Texas, hereby certify to the	
17	following:	
18	That the witness, ROBERT L. KEHR, was duly	
19	sworn by the officer and that the transcript of the oral	
20	deposition is a true record of the testimony given by	
21	the witness;	
22	That the deposition transcript was submitted	
23	on _____, to the witness or to the attorney	
24	for the witness for examination, signature, and returned	
25	to me by _____;	
	That the amount of time used by each party at	
	the deposition is as follows:	
	MR. GRANT C. MARTIN-3 HOURS AND 2 MINUTES	
	That pursuant to information given to the	
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1	deposition officer at the time said testimony was taken,
2	the following includes counsel for all parties of
3	record:
4	FOR NEXPOINT REAL ESTATE PARTNERS:
5	Brant C. Martin, Esq.
6	Lauren K. Drawhorn, Esq.
7	WICK PHILLIPS
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9	Suite 1500
10	Fort Worth, Texas 76102
11	Telephone: 817-332-7788
12	E-mail: brant.martin@wickphillips.com
13	lauren.drawhorn@wickphillips.com
14	FOR HIGHLAND CAPITAL MANAGEMENT:
15	Kenneth Brown, Esq.
16	La Asia Canty, Esq.
17	PACHULSKI STANG ZIEHL AND JONES
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19	Floor 13
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24	FOR UBS SECURITIES AND UBS AG LONDON BRANCH:
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	885 3rd Avenue
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	New York, New York 10022
	Telephone: 212-906-4612
	E-mail: shannon.mclaughlin@lw.com
	I further certify that I am neither counsel
	for, related to, nor employed by any of the parties or
	attorneys in the action in which this proceeding was
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<p>1 taken, and further that I am not financially or 2 otherwise interested in the outcome of the action. 3 Certified to by me this 23rd day of 4 September, 2021. 5 6 7 8  9 Ashley Elizondo, Texas CSR No. 9465 10 Expiration Date: 02/28/2022 11 VERITEXT LEGAL SOLUTIONS 12 Veritext Registration No. 571 13 300 Throckmorton Street 14 Suite 1600 15 Fort Worth, Texas 76102 16 (817) 336-3042 (800) 336-4000 17 18 FURTHER CERTIFICATION 19 ----- 20 The original deposition was/was not returned 21 to the deposition officer on _____; 22 If returned, the attached Changes and 23 Signature page contains any changes and the reasons 24 therefor; 25 If returned, the original deposition was</p> <p style="text-align: right;">Page 146</p>	<p>1 kbrown@pszjlaw.com 2 September 23, 2021 3 RE: IN RE Highland Capital Management, L.P. 4 DEPOSITION OF: Robert L. Kehr (# 4800824) 5 The above-referenced witness transcript is 6 available for read and sign. 7 Within the applicable timeframe, the witness 8 should read the testimony to verify its accuracy. If 9 there are any changes, the witness should note those 10 on the attached Errata Sheet. 11 The witness should sign and notarize the 12 attached Errata pages and return to Veritext at 13 errata-tx@veritext.com. 14 According to applicable rules or agreements, if 15 the witness fails to do so within the time allotted, 16 a certified copy of the transcript may be used as if 17 signed. 18 Yours, 19 Veritext Legal Solutions 20 21 22 23 24 25</p> <p style="text-align: right;">Page 148</p>
<p>1 delivered to _____, ROBERT L. KEHR; 2 That \$ _____ is the deposition 3 officer's charges to the DEBTOR for preparing the 4 original deposition transcript and any copies of 5 exhibits; 6 That a copy of this certificate was served on 7 all parties shown herein and filed with the Clerk. 8 Certified to by me this _____ day of 9 _____, 2021. 10 11 12 13  14 Ashley Elizondo, Texas CSR No. 9465 15 Expiration Date: 02/28/2022 16 VERITEXT LEGAL SOLUTIONS 17 Veritext Registration No. 571 18 300 Throckmorton Street 19 Suite 1600 20 Fort Worth, Texas 76102 21 (817) 336-3042 (800) 336-4000 22 23 24 25</p> <p style="text-align: right;">Page 147</p>	

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[borrowing - cause]

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[kind - litigator]

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<b>whatsoever</b> 99:23	144:14,17,19,20	95:10	
<b>whichever</b> 84:23	148:5,7,9,11,15	<b>wrong</b> 55:17,19	
<b>wick</b> 2:5 5:18	<b>woman</b> 34:8	88:10 113:6	
52:12 56:24 57:15	<b>word</b> 25:8 65:22	117:13	
58:2 61:3,6 65:4	82:20	<b>wrote</b> 41:8 80:10	
65:14,21 68:4	<b>words</b> 13:15 55:15		
76:3 89:16 91:4	74:23,25 81:9		



Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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